

# Business Law (BCom Hons, DU - Semester I)

## Exam-Focused Notes

### 1 Indian Contract Act, 1872 (Part I: General Principles)

This foundational act governs agreements and promises that are legally enforceable, forming the basis of commercial transactions.

#### 1.1 Essentials of a Valid Contract (Section 10)

For an agreement to be a legally enforceable contract, it must satisfy several essential elements:

- **Offer and Acceptance:** There must be a clear and definite offer made by one party (offeror) and an unconditional acceptance of that offer by the other party (offeree). This creates a consensus ad idem (meeting of minds).
- **Lawful Consideration:** Consideration is the 'price' for the promise. It refers to something of value (act, abstinence, or promise) exchanged between parties. It must be lawful and real, though not necessarily adequate.
- **Capacity of Parties (Competency to Contract):** The parties entering into the contract must be legally competent to do so. This means they must be of the age of majority, of sound mind, and not disqualified from contracting by any law.
- **Free Consent:** The agreement must be entered into with the free consent of all parties. Consent is considered 'free' when it is not caused by coercion, undue influence, fraud, misrepresentation, or mistake.
- **Lawful Object:** The purpose or object of the agreement must be lawful. It should not be forbidden by law, fraudulent, immoral, or opposed to public policy.
- **Possibility of Performance:** The terms of the agreement must be capable of being performed. An agreement to do an impossible act is void.
- **Not Expressly Declared Void:** The agreement must not be one that the law expressly declares to be void (e.g., agreements in restraint of trade, wagering agreements).
- **Certainty of Meaning:** The terms of the agreement must be clear, definite, and not vague or ambiguous.
- **Intention to Create Legal Relations:** The parties must intend that their agreement should have legal consequences and create legal obligations. (Though not explicitly in Section 10, it's a well-established principle).
- **Legal Formalities:** Where required by law (e.g., for sale of immovable property), the contract must comply with necessary legal formalities like writing, registration, or attestation.

#### 1.2 Types of Contracts

- **On the basis of Validity/Enforceability:**

- **Valid Contract:** An agreement enforceable by law, fulfilling all essential elements.
- **Void Agreement:** An agreement that is not enforceable by law from the very beginning. It creates no legal rights or obligations (e.g., agreement with a minor).
- **Voidable Contract:** An agreement that is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others. Typically, where consent is not free (e.g., contract influenced by coercion or fraud).
- **Illegal Agreement:** An agreement forbidden by law or immoral. It is void ab initio, and collateral transactions to it are also tainted.
- **Unenforceable Contract:** A contract that is valid in substance but cannot be enforced due to some technical defect (e.g., absence of writing, registration, or time-barred by limitation law).
- **On the basis of Formation:**
  - **Express Contract:** Contracts made by words, spoken or written.
  - **Implied Contract:** Contracts created by the conduct of the parties or the circumstances of the case, without explicit words.
  - **Quasi-Contract:** Not a true contract, but an obligation created by law to prevent unjust enrichment. Based on principles of equity.
- **On the basis of Performance:**
  - **Executed Contract:** Both parties have fulfilled their obligations.
  - **Executory Contract:** Obligations are yet to be performed by one or both parties.

**PYQ Focus:** Defining a contract and explaining its essential elements with suitable examples.

### 1.3 Offer and Acceptance

These are the primary components that form an agreement, which is the first step towards a contract.

#### 1.3.1 Offer (Sections 2(a), 4-9)

- **Definition (Section 2(a)):** When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal (offer).
- **Legal Rules for a Valid Offer:**
  - **Must be Clear, Definite, and Unambiguous:** The terms of the offer must be certain and not vague.

- **Must be Communicated to the Offeree:** An offer is effective only when it comes to the knowledge of the person to whom it is made. An offeree cannot accept an offer of which they are unaware.
- **Must be Made with an Intention to Create Legal Relations:** Social invitations are not offers.
- **May be Specific or General:** An offer can be made to a specific person or to the public at large (e.g., *Carlill v. Carbolic Smoke Ball Co.*).
- **May be Express or Implied:** By words or conduct.
- **Must be Distinguished from Invitation to Offer:** An invitation to offer is merely an invitation to make an offer (e.g., goods displayed in a shop window, an advertisement for a tender).
- **Revocation of Offer (Section 4, 5, 6):** An offer can be revoked by the offeror before its acceptance is complete as against the offeror.
- **Ways of Revocation:** By notice of revocation, by lapse of time, by failure of a condition precedent, by death or insanity of the offeror (if known to the offeree before acceptance), or by counter-offer.

### 1.3.2 Acceptance (Sections 2(b), 4, 7, 8)

- **Definition (Section 2(b)):** When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise.
- **Legal Rules for a Valid Acceptance:**
  - **Must be Absolute and Unqualified:** Acceptance must be without any conditions or modifications. Any deviation constitutes a counter-offer, which terminates the original offer.
  - **Must be Communicated to the Offeror:** Acceptance is complete only when it is communicated to the offeror. Silence does not generally amount to acceptance.
  - **Must be in a Prescribed Manner (if any):** If the offer specifies a mode of acceptance, it must be accepted in that mode.
  - **Must be Given Within a Reasonable Time:** If no time is prescribed, acceptance must occur within a reasonable period.
  - **Cannot Precede an Offer:** There can be no acceptance without an offer.
- **Communication of Acceptance (Section 4):**
  - **As against the Proposer (Offeror):** When it is put into a course of transmission to him, so as to be out of the power of the acceptor.
  - **As against the Acceptor:** When it comes to the knowledge of the proposer.

- **Revocation of Acceptance:** An acceptance can be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

**PYQ Focus:** Explaining the rules of a valid offer and acceptance, often with reference to relevant case laws (e.g., Lalman Shukla v. Gauri Dutt for communication of offer, Carlill v. Carbolic Smoke Ball Co. for general offer, Felthouse v. Bindley for silence not being acceptance).

## 1.4 Consideration (Section 2(d))

Consideration is a vital element for a valid contract, signifying the mutual exchange of value.

### 1.4.1 Definition (Section 2(d))

When, at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.

### 1.4.2 Legal Rules Regarding Consideration

- **Must Move at the Desire of the Promisor:** The act or abstinence forming the consideration must be done at the specific request or desire of the promisor.
- **May Move from the Promisee or Any Other Person:** The person providing the consideration need not be the promisee themselves. It can be a third party (Chinnaya v. Ramaya). This is known as the 'privity of consideration.'
- **May be Past, Present, or Future:**
  - **Past Consideration:** Something done before the promise is made.
  - **Present (Executed) Consideration:** Something done simultaneously with the promise.
  - **Future (Executory) Consideration:** A promise to do something in the future in exchange for a future promise.
- **Need Not be Adequate:** The law requires that consideration must be real and of some value, but it does not require it to be of equal value to the promise. The parties are free to bargain.
- **Must be Lawful:** The consideration must not be illegal, immoral, or opposed to public policy.
- **Must be Real and Not Illusory:** It must be something that the law can recognize as having value.

### 1.4.3 Exceptions to "No Consideration, No Contract" (Agreements without Consideration are Void)

Section 25 of the Indian Contract Act, 1872, lists specific circumstances where an agreement made without consideration is still valid and enforceable:

- **Agreement Made on Account of Natural Love and Affection (Section 25(1)):**
  - Must be expressed in writing and registered.
  - Must be between parties standing in a near relation to each other.
  - Must be made out of natural love and affection.
  - **Example:** A registered agreement by a father to give his son Rs. 10,000 out of natural love and affection.
- **Promise to Compensate for Past Voluntary Services (Section 25(2)):**
  - A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do.
  - **Example:** If A finds B's lost purse and returns it, and B promises to give A Rs. 100, this is a valid contract.
- **Promise to Pay a Time-Barred Debt (Section 25(3)):**
  - A promise made in writing and signed by the debtor (or his authorized agent) to pay a debt that is barred by the law of limitation.
  - **Example:** A owes B Rs. 1,000, but the debt is barred by limitation. A signs a written promise to pay B Rs. 500. This is a valid contract.
- **Agency (Section 185):** No consideration is necessary to create an agency.
- **Completed Gift (Explanation 1 to Section 25):** Section 25 does not affect the validity, as between donor and donee, of any gift actually made.
- **Bailment (Section 148):** Consideration is not always necessary for a contract of bailment.

**PYQ Focus:** Defining consideration and thoroughly discussing the exceptions to the rule 'No consideration, no contract' with relevant illustrations.

## 1.5 Capacity to Contract (Sections 11-12)

This element ensures that parties entering a contract are legally capable of understanding its terms and consequences.

### 1.5.1 Who is Competent to Contract (Section 11)

Every person is competent to contract who is:

1. Of the age of majority according to the law to which he is subject (i.e., 18 years in India, or 21 years if a guardian is appointed by court).

2. Of sound mind.
3. Not disqualified from contracting by any law to which he is subject.

### 1.5.2 Incompetent Persons (Who Cannot Contract)

- **Minors:**

- **Position:** A contract entered into by a minor is void ab initio (void from the very beginning). This was established in the landmark case of *Mohori Bibee v. Dharmodas Ghose*.
- **Implications of Void Ab Initio:**
  - \* A minor cannot be compelled to perform his part of the contract.
  - \* He cannot ratify the agreement upon attaining majority.
  - \* The minor is not liable even for necessities supplied to him, though his property may be liable (*Nash v. Inman* for English law, similar principles apply in India under Quasi-Contracts, Section 68).
  - \* No estoppel against a minor (he is not prevented from pleading his minority even if he misrepresented his age).
  - \* No specific performance against a minor.
  - \* No restitution (restoration of benefit) by the minor, generally, unless the minor obtained the benefit by fraud.
- **Example:** If a minor borrows money by executing a mortgage, the mortgage is void, and the moneylender cannot recover the money or enforce the mortgage.

- **Persons of Unsound Mind (Section 12):** A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

- **Classification:**

- \* **Lunatics:** Persons who are insane but have lucid intervals. Contracts made during lucid intervals are valid.
  - \* **Idiots:** Persons who are born with permanent mental incapacity. Contracts made by idiots are absolutely void.
  - \* **Drunken/Intoxicated Persons:** Persons who are temporarily unable to form a rational judgment due to intoxication. Contracts made during such state are voidable at their option.
  - **Position:** Contracts made by persons of unsound mind are generally void, except those made during lucid intervals.
- **Persons Disqualified by Law:** Certain persons are disqualified from entering into contracts by specific laws.

- **Examples:** Alien enemies (can only contract with special permission), insolvent persons (cannot enter into contracts regarding their property), convicts (during their sentence).

**PYQ Focus:** Explaining the contractual capacity of a minor, detailing the legal position of a minor in relation to contracts, and citing relevant case law (Mohori Bibee v. Dharmodas Ghose).

## 1.6 Free Consent (Sections 13-19)

Consent is essential for an agreement, but it must be 'free' to make the agreement a contract.

### 1.6.1 Definition of Consent (Section 13)

Two or more persons are said to consent when they agree upon the same thing in the same sense (consensus ad idem).

### 1.6.2 Factors Vitiating (Making Unfree) Consent

If consent is caused by any of the following factors, the agreement is generally voidable at the option of the party whose consent was so caused:

- **Coercion (Section 15):** The committing, or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.
  - **Example:** A threatens to shoot B if B does not sell his house to A for Rs. 50 lakhs. B sells the house. B's consent is caused by coercion.
- **Undue Influence (Section 16):** When one party is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other. This usually arises where there is a pre-existing relationship (e.g., doctor-patient, parent-child, spiritual advisor-disciple).
  - **Example:** A spiritual guru induces his disciple to gift him all his property. There is a presumption of undue influence.
- **Distinction between Coercion and Undue Influence:**
  - **Nature:** Coercion involves physical or threatened physical force/property detention. Undue influence involves moral or mental pressure.
  - **Relationship:** Coercion usually involves no pre-existing relationship. Undue influence requires a pre-existing dominant-subordinate relationship.
  - **IPC:** Coercion is connected to acts forbidden by IPC. Undue influence is not.
  - **Parties:** Coercion can be exercised by or against any person. Undue influence is typically by one contracting party over the other.
- **Fraud (Section 17):** Includes certain acts committed by a party to a contract (or with his connivance, or by his agent) with intent to deceive another party thereto or his agent, or to induce him to enter into the contract. It includes:

- The suggestion, as a fact, of that which is not true, by one who does not believe it to be true.
- The active concealment of a fact by one having knowledge or belief of the fact.
- A promise made without any intention of performing it.
- Any other act fitted to deceive.
- Any such act or omission as the law specially declares to be fraudulent.
- **Silence as Fraud:** Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech. (Caveat Emptor principle).
- **Misrepresentation (Section 18):** A false statement made innocently without any intention to deceive, believing it to be true. It can be caused by:
  - The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true.
  - Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him.
  - Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.
- **Distinction between Fraud and Misrepresentation:**
  - **Intention:** Fraud involves an intent to deceive; Misrepresentation does not.
  - **Knowledge:** In fraud, the person making the false statement knows it to be false or recklessly disregards the truth; in misrepresentation, they believe it to be true.
  - **Remedy:** Both make the contract voidable. In fraud, the injured party can also claim damages; in misrepresentation, damages are generally not available (unless specific exceptions).
- **Mistake (Sections 20, 21, 22):** An erroneous belief about something.
  - **Bilateral Mistake (Section 20):** When both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement. Such an agreement is void.
  - **Unilateral Mistake (Section 22):** When only one of the parties is under a mistake as to a matter of fact. The contract is not voidable merely because one of the parties was under a mistake as to a matter of fact. However, if the unilateral mistake is induced by fraud or misrepresentation of the other party, or if it relates to identity of the person contracted with (in cases where identity is crucial), the contract may be void or voidable.
  - **Mistake of Law:** Generally, a mistake as to any law in force in India does not vitiate a contract. A mistake as to a law not in force in India (foreign law)



has the same effect as a mistake of fact.

**PYQ Focus:** Differentiating between Coercion and Undue Influence, and between Fraud and Misrepresentation, with examples.

## 1.7 Legality of Object & Consideration (Sections 23-24)

For a contract to be valid, both its object (purpose) and the consideration must be lawful.

### 1.7.1 What makes an Object or Consideration Unlawful (Section 23)

The object or consideration of an agreement is unlawful if it:

- **Is Forbidden by Law:** Directly prohibited by any statute or legislation.
  - **Example:** An agreement to commit a crime. An agreement to sell prohibited goods.
- **Is of Such a Nature that, if Permitted, it would Defeat the Provisions of any Law:** Even if not directly prohibited, it circumvents the purpose of a law.
  - **Example:** An agreement between a debtor and creditor to defeat the provisions of insolvency law.
- **Is Fraudulent:** The object or consideration involves a deceptive act aimed at causing loss to another.
  - **Example:** An agreement to publish a false advertisement.
- **Involves or Implies Injury to the Person or Property of Another:**
  - **Example:** An agreement to assault someone. A contract with a journalist to publish defamatory content.
- **Is Immoral:** Considered morally wrong by the society (e.g., agreements promoting prostitution or illicit relationships).
  - **Example:** An agreement to give money to a woman for living in adultery with her.
- **Is Opposed to Public Policy:** Agreements detrimental to the welfare of the public or the state. This is a broad category, and courts decide what falls under it. Examples include:
  - Trading with an alien enemy.
  - Stifling prosecution (agreeing not to pursue a criminal charge for money).
  - Maintenance and Champerty (unjustly funding litigation).
  - Agreements in restraint of parental rights, personal liberty, or marriage.
  - Agreements tending to create monopolies.
  - Agreements to influence public offices.

### 1.7.2 Effect of Unlawful Object/Consideration (Section 24)

If the consideration or object of an agreement is unlawful, the entire agreement is void. If parts are lawful and parts unlawful, the lawful parts may be enforceable if they can be severed from the unlawful parts.

**PYQ Focus:** Explaining what makes a contract illegal or void due to unlawful object or consideration, providing various examples for each category.

## 1.8 Void Agreements (Sections 25-30)

Certain agreements are specifically declared to be void by the Indian Contract Act, 1872, even if they might otherwise appear to meet the general essentials of a contract.

### 1.8.1 Agreements Expressly Declared Void

- **Agreement without Consideration (Section 25):** As discussed earlier, subject to specific exceptions.
- **Agreement in Restraint of Marriage (Section 26):** Every agreement in restraint of the marriage of any person, other than a minor, is void.
  - **Example:** A promises B Rs. 5,000 if B does not marry for 10 years. This agreement is void.
- **Agreement in Restraint of Trade (Section 27):** Every agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void.
  - **Exceptions:**
    - \* Sale of goodwill: The seller of goodwill may be restrained from carrying on a similar business within specified local limits.
    - \* Partnership Act: Agreements among partners that restrict trade are allowed under certain conditions.
    - \* Trade combinations (if reasonable).
    - \* Service agreements (reasonable restraint during employment or to protect trade secrets post-employment).
- **Agreement in Restraint of Legal Proceedings (Section 28):** Agreements that absolutely restrict a party from enforcing his rights by usual legal proceedings or which limit the time within which he may enforce his rights, are void.
  - **Exceptions:** Arbitration agreements.
- **Uncertain Agreements (Section 29):** Agreements, the meaning of which is not certain, or capable of being made certain, are void.
  - **Example:** A agrees to sell to B 'my white horse for Rs. 500 or Rs. 1,000.' There is nothing to show which of the two prices is to be given. The agreement is void.

- **Wagering Agreements (Section 30):** Agreements by way of wager (gambling agreements) are void.
  - **Essential Elements of a Wager:**
    - \* Promise to pay money or money's worth.
    - \* Conditional on the happening or non-happening of an uncertain future event.
    - \* Each party must stand to win or lose.
    - \* No control over the event by either party.
    - \* No other interest in the event other than the stake.
  - **Example:** An agreement to pay Rs. 1,000 if a particular cricket team wins the match.
  - **Exceptions:** Horse racing (if stakes are Rs. 500 or more), certain games of skill, share market transactions (if genuine delivery/transfer is intended).
- **Agreements Contingent on Impossible Events (Section 36):** Contingent agreements to do or not to do anything if an impossible event happens are void, whether the impossibility is known or not to the parties.

**PYQ Focus:** Discussing various types of agreements that are expressly declared void under the Indian Contract Act, 1872, with examples for each type.

## 1.9 Contingent and Quasi-Contracts (Sections 31-36, 68-72)

These are distinct categories of agreements and obligations, differing from standard contracts.

### 1.9.1 Contingent Contracts (Sections 31-36)

- **Definition (Section 31):** A 'contingent contract' is a contract to do or not to do something, if some event, collateral to such contract, does or does not happen.
- **Key Characteristics:**
  - **Performance Depends on a Future Uncertain Event:** The primary difference from ordinary contracts is that the performance is conditional.
  - **Event Must be Collateral:** The event must be distinct from the main performance promised in the contract.
  - **Enforceable Only When the Event Happens (or does not happen, as agreed):** If the event becomes impossible, the contract becomes void.
- **Enforcement Rules:**
  - **Contingent on a Future Event Happening (Section 32):** The contract cannot be enforced unless and until that event has happened. If the event becomes impossible, the contract becomes void.

- **Contingent on an Event Not Happening (Section 33):** The contract can be enforced when the happening of that event becomes impossible (i.e., it is certain that it will not happen).
- **Contingent on a Person's Future Conduct (Section 34):** If the future event is the way a person will act at an unspecified time, the contract becomes void if that person does anything that renders the event impossible.
- **Contingent on Happening within Fixed Time (Section 35):** If the event is to happen within a fixed time and does not happen within that time, or becomes impossible, the contract becomes void.
- **Contingent on Impossible Events (Section 36):** Void from the beginning.
- **Example:** A contracts to pay B Rs. 10,000 if B's house is burnt. This is a contingent contract. If the house burns, A must pay. If the house is demolished (making burning impossible), the contract becomes void.

#### 1.9.2 *Quasi-Contracts (Sections 68-72) / Certain Relations Resembling those Created by Contract*

- **Nature:** These are not contracts in the true sense, as there is no offer, acceptance, or free consent. They are obligations imposed by law based on the principle of equity, to prevent unjust enrichment. The law implies a promise to pay or act where justice requires it.
- **Types:**
  - **Claim for Necessaries Supplied to a Person Incapable of Contracting (Section 68):** If a person incapable of entering into a contract (e.g., a minor or person of unsound mind) or anyone whom he is legally bound to support, is supplied with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
    - \* **Example:** A supplies B (a lunatic) with necessaries. A can claim reimbursement from B's property.
  - **Payment by an Interested Person (Section 69):** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
    - \* **Example:** B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government is in arrear; for the recovery of which his land is advertised for sale by the Government. B pays the Government the sum due. B is entitled to recover the amount from A.
  - **Obligation of Person Enjoying Benefit of Non-Gratuitous Act (Section 70):** Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

- \* **Example:** A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. B is bound to pay A for them.
- **Responsibility of Finder of Goods (Section 71):** A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.
- **Liability of Person to Whom Money is Paid, or Thing Delivered, by Mistake or Under Coercion (Section 72):** A person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.
- \* **Example:** A and B jointly owe C Rs. 1,000. A alone pays the amount. B, not knowing this fact, pays Rs. 1,000 over again to C. C is bound to repay the amount to B.

**PYQ Focus:** Defining contingent contracts and quasi-contracts with clear examples for each type.

## 1.10 Performance and Discharge of Contract

This section deals with how contractual obligations are fulfilled and how contracts come to an end.

### 1.10.1 Performance of Contract

- **Who Can Perform:** The promisor himself, his agent, his legal representative (in case of death, unless personal skill is required), or a third party (if accepted by promisee).
- **Time and Place of Performance:** Must be performed within the agreed time and at the agreed place.
- **Reciprocal Promises:** Promises that form the consideration or part of the consideration for each other. They must be performed simultaneously or in the order specified.
- **Appropriation of Payments:** Rules for deciding which debt is discharged when a debtor owes several debts to the same creditor and makes a payment.

### 1.10.2 Modes of Discharge of Contract

A contract is discharged (or terminated) when the parties are relieved from their obligations.

- **By Performance:**
  - **Actual Performance:** Both parties fulfill their promises exactly as agreed.
  - **Attempted Performance (Tender):** The promisor offers to perform his obligation, but the promisee refuses to accept the performance. The promisor is then discharged from liability.
- **By Mutual Consent or Agreement:**

- **Novation:** A new contract is substituted for an old one, either between the same parties or between different parties.
- **Rescission:** All or some of the terms of the contract are cancelled by mutual agreement.
- **Alteration:** Changing one or more terms of a contract with mutual consent.
- **Remission (Waiver):** Acceptance of a lesser fulfillment of the promise made.
- **Merger:** An inferior right accruing to a party under a contract merges into a superior right subsequently acquired by the same party.
- **By Impossibility of Performance:**
  - **Initial Impossibility:** If the act itself is impossible from the beginning, the agreement is void (e.g., agreement to find treasure by magic).
  - **Supervening Impossibility (Doctrine of Frustration):** When an act becomes impossible after the contract is made, without the fault of either party. This discharges the contract.
    - \* **Examples:** Destruction of subject matter, death or incapacity of a party (in contracts requiring personal skill), change of law, outbreak of war, non-existence of a particular state of things.
- **By Lapse of Time:** If a contract is not performed within the specified time, or within a reasonable time if no time is specified, and the Limitation Act applies, it may be discharged by lapse of time.
- **By Operation of Law:**
  - Death of the promisor (in personal skill contracts).
  - Insolvency of a party.
  - Merger of rights.
  - Unauthorized material alteration of a written contract.
- **By Breach of Contract:** When a party fails to perform his obligation or repudiates the contract before the due date.
  - **Actual Breach:** Occurs on the due date of performance or during performance.
  - **Anticipatory Breach:** Occurs when a party declares his intention not to perform the contract before the due date. The innocent party can immediately treat the contract as discharged and sue for damages, or wait until the due date.

### *1.10.3 Remedies for Breach of Contract*

When a contract is breached, the injured party has several remedies available:

- **Rescission of the Contract:** The injured party can treat the contract as terminated and is discharged from further obligations. They can also claim damages for any loss suffered.
- **Damages:** Monetary compensation awarded to the injured party for the loss or injury suffered due to the breach.
  - **Ordinary Damages:** Compensation for losses that naturally arise in the usual course of things from the breach.
  - **Special Damages:** Compensation for losses that arise due to special circumstances known to both parties at the time of contracting (Hadley v. Baxendale).
  - **Punitive/Exemplary Damages:** Awarded to punish the defaulting party (rare in contract law).
  - **Nominal Damages:** Small sum awarded when there is a technical breach but no actual loss.
  - **Liquidated Damages and Penalty:** Pre-estimated damages agreed upon by parties in the contract itself. If a genuine pre-estimate, it's liquidated damages (enforceable). If excessive and punitive, it's a penalty (not fully enforceable, courts award reasonable compensation).
- **Specific Performance:** A court order compelling the defaulting party to perform the very act promised in the contract, rather than paying damages. This remedy is usually granted when monetary compensation is inadequate (e.g., contracts for unique goods, immovable property).
- **Injunction:** A court order prohibiting a party from doing something that they promised not to do (negative covenant).
  - **Example:** A singer contracts to sing only for B for a certain period. If she contracts to sing for C during that period, B can obtain an injunction to prevent her from singing for C.
- **Quantum Meruit ("as much as earned"):** A claim for reasonable compensation for work done or services rendered when the original contract becomes void, or is discharged, or is not fully performed.

**PYQ Focus:** Explaining the different modes of discharge of a contract (performance, mutual consent, impossibility, breach) with examples.

### 1.11 Special Contracts (Part II of Indian Contract Act)

Part II of the Indian Contract Act, 1872, deals with specific types of contracts that have unique rules due to their nature.

#### 1.11.1 Contract of Indemnity (Sections 124-127)

- **Definition (Section 124):** A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

- **Parties:**
  - **Indemnifier:** The person who promises to make good the loss.
  - **Indemnified (Indemnity-holder):** The person whose loss is to be made good.
- **Nature:** It is a contract to protect against a potential loss. The liability of the indemnifier arises only when the indemnified suffers a loss.
- **Example:** A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a sum of Rs. 200. This is a contract of indemnity.
- **Rights of Indemnity-holder (Section 125):** When sued, he can recover damages, costs, and sums paid under compromise, provided he acted prudently.

#### 1.11.2 Contract of Guarantee (Sections 124-127)

- **Definition (Section 126):** A contract to perform the promise, or discharge the liability, of a third person in case of his default.
- **Parties:**
  - **Principal Debtor:** The person primarily liable to pay the debt or perform the duty.
  - **Creditor:** The person to whom the guarantee is given.
  - **Surety:** The person who gives the guarantee (secondary liability).
- **Nature:** There are three separate contracts: between principal debtor and creditor, between surety and creditor, and an implied contract between surety and principal debtor. The liability of the surety is secondary, arising only upon the default of the principal debtor.
- **Example:** A takes a loan from C, and B promises C that if A defaults, B will pay. Here, A is the principal debtor, C is the creditor, and B is the surety.
- **Types of Guarantee:** Specific (for a single transaction) or Continuing (for a series of transactions).
- **Revocation of Guarantee:** By notice (for future transactions), death of surety, novation, etc.
- **Rights of Surety:**
  - **Against Creditor:** Right to security, right to set-off.
  - **Against Principal Debtor:** Right of subrogation (stepping into shoes of creditor), right to indemnity (reimbursement for payments made).
  - **Against Co-sureties:** Right to contribution (if multiple sureties).



Feature	Contract of Indemnity	Contract of Guarantee
No. of Parties	Two: Indemnifier and Indemnified	Three: Principal Debtor, Creditor, Surety
No. of Contracts	One	Three (one principal contract between debtor and creditor, one between surety and creditor, one implied between surety and debtor)
Liability	Primary and independent	Secondary (arises on default of principal debtor)
Purpose	To save from loss	To assure payment of debt or performance of a duty
Event	Loss caused by promisor or third party	Default of the principal debtor
Right to Sue	Indemnifier cannot sue third party directly	Surety can sue principal debtor or claim subrogation rights
Nature	Contingent (on loss occurring)	Contingent (on default occurring)

Table 1: Distinction between Contract of Indemnity and Contract of Guarantee

### 1.11.3 Distinction between Indemnity and Guarantee

### 1.11.4 Bailment (Sections 148-181)

- **Definition (Section 148):** The delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.
- **Parties:**
  - **Bailor:** The person who delivers the goods.
  - **Bailee:** The person to whom the goods are delivered.
- **Key Characteristics:**
  - **Delivery of Goods:** Possession is transferred, but ownership remains with the bailor.
  - **For a Specific Purpose:** The purpose must be defined.
  - **Return or Disposal:** The goods must be returned or disposed of as per the bailor's instructions.
  - **Movable Goods:** Only movable goods can be bailed.
- **Types of Bailment:** For exclusive benefit of bailor, for exclusive benefit of bailee, for mutual benefit.
- **Duties of Bailor:** To disclose known faults, to bear necessary expenses.

- **Duties of Bailee:** To take reasonable care of goods, not to use goods unauthorisedly, not to mix goods, to return goods.
- **Rights of Bailor/Bailee:** Corresponding rights related to care, charges, return of goods, etc.

#### 1.11.5 Pledge (Sections 172-181)

- **Definition (Section 172):** The bailment of goods as security for payment of a debt or performance of a promise.
- **Parties:**
  - **Pawnor (Pledgor):** The bailor who delivers goods as security.
  - **Pawnee (Pledgee):** The bailee to whom goods are delivered as security.
- **Key Characteristics:**
  - Specific purpose of security: Distinction from general bailment.
  - Goods delivered as security for a debt or performance of a promise.
- **Rights of Pawnee:** Right to retain goods, right to sue pawnor, right to sell goods (after notice), right to expenses.
- **Rights of Pawnor:** Right to redeem goods, right to receive increased value.

#### 1.11.6 Distinction between Bailment and Pledge

Feature	Bailment	Pledge
Purpose	Repair, safe custody, carriage, etc.	Security for a debt or performance of a promise
Right to Sell	Bailee cannot ordinarily sell	Pawnee has a right to sell after giving notice
Usage of Goods	Bailee may use goods as per terms	Pawnee cannot use goods

Table 2: Distinction between Bailment and Pledge

#### 1.11.7 Contract of Agency (Sections 182-238)

- **Definition (Section 182):** An agent is a person employed to do any act for another, or to represent another in dealings with third persons. The person for whom such act is done, or who is so represented, is called the principal.
- **Key Principle:** The act of the agent is the act of the principal (Qui facit per alium facit per se).
- **Creation of Agency:** Can be created by express agreement (written or oral), implied agreement (by conduct, relationship, necessity, estoppel, or holding out), or by ratification.

- **Duties of Agent:** To act as per instructions, to exercise reasonable skill and diligence, to render accounts, to communicate with the principal, not to make secret profits, not to delegate authority (unless specified).
- **Rights of Agent:** Right to remuneration, right of retainer, right of lien (for unpaid remuneration/expenses), right to indemnity, right to compensation.
- **Duties of Principal:** To pay remuneration, to indemnify the agent against lawful acts.
- **Termination of Agency:** By revocation by principal, renunciation by agent, completion of business, death or insanity of principal/agent, insolvency of principal/agent, expiry of fixed period, destruction of subject matter.

**PYQ Focus:** Distinguishing between contract of indemnity and contract of guarantee, and explaining the rights and duties of bailor and bailee.

### 1.12 PYQ Practice Topics (Frequent)

This table summarizes the types of questions frequently asked in exams, correlating with the above topics:

Topic	Type of Question
Essentials of Contract	Define, list, and explain the essential elements with examples
Offer and Acceptance	Explain the rules of valid offer and acceptance with relevant case laws (e.g., Carlill v. Carbolic Smoke Ball Co., Felthouse v. Bindley)
Consideration	Define consideration and discuss exceptions to the rule 'No consideration, no contract' with illustrations
Capacity to Contract	Explain the legal position of a minor in contracts, citing cases like Mohori Bibee v. Dharmodas Ghose
Free Consent	Differentiate between coercion and undue influence, and between fraud and misrepresentation, with examples
Quasi/Contingent Contracts	Define and explain quasi-contracts and contingent contracts with clear examples
Special Contracts	Compare and contrast indemnity and guarantee, and explain the rights and duties of bailor and bailee

Table 3: Frequently Asked Questions in Business Law

## References

- [1] Indian Contract Act, 1872, Section 124.
- [2] Indian Contract Act, 1872, Section 125.

[3] Indian Contract Act, 1872, Section 126.

[4] Indian Contract Act, 1872, Section 148.

[5] Indian Contract Act, 1872, Section 172.

[6] Indian Contract Act, 1872, Section 182.