


IMP VIDEOS – SCAN QR

CA Foundation May 2025




LAW IMP TOPICS
100% PASS HO
JAOGE ITNA KARLO BS

FREE FULLY UPDATED
QUESTION BANK SOFT COPY



CA Foundation WALO




**LAW KAISE YAAD
KARE ?**
SHORTCUT SIKHO

100% TRIED AND TESTED
MUST WATCH



CA Foundation WALO



**LAW ANS WRITING
NAHI HOTA SIR?**
KAISE LIKHNA HAI?

FREE GIFT - GET ALL
VARIETIES OF ANSWER HERE



CA Foundation WALO




**KEYWORDS KA KYA
CHAKKAR HAI?**
MAAN SE CHALEGA!

KEYWORDS KA JHANJHAT
KHATAM ISKE BAAD



NADAN PARINDO



**1ST YA 2ND ATTEMPT
MAI KAISE NIKALEGA**
APKA CA FOUNDATION

3RD ATTEMPT HAI TOH KAISE
MUMKIN HAI?



Chapter: 2 - Indian Contract Act, 1872

Unit: 5 - Breach of Contract

(Covers All RTP, MTP, PYQ, ICAI SM, MDTP till Jan 2025)

18 - In case of breach of contract, the court may award compensation or damages. Explain the circumstances when court may award ordinary damages, special damages and liquidated damages under the provisions of The Indian Contract Act, 1872.

5)c)i)3m,MDTP7,10, 5)c)i)3m,MTP1,Jan2025, 3)c)i)3m,Sept2024

Ans - Ordinary damages: When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from the breach of it.

Special damages: Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

17 - Seema was running a boutique in New Delhi. She has to deliver some cloth to her friend Kiran who was putting up an exhibition in Mumbai. Seema delivered the sewing machine and some cloth to a railway company to be delivered at a place where the exhibition was to be held. Seema expected to earn an exceptional profit from the sales made at this exhibition however she did not bring this fact to the notice of the railway's authorities. The goods were delivered to the place after the conclusion of the exhibition. On account of such breach of contract by railways authorities, can Seema recover the loss of profits under the Indian Contract Act, 1872?

RTP,Sept2024, 3)c)6m,MTP1,Dec2022, RTP,June2022

Ans - As per Section 73 to 75 of Indian Contract Act, 1872, damage means a sum of money claimed or awarded in compensation for a loss or an injury. Whenever a party commits a breach, the aggrieved party can claim the compensation for the loss so suffered by him. General damages are those which arise naturally in the usual course of things from the breach itself. (Hadley Vs Baxendale).

Therefore, when a breach is committed by a party, the defendant shall be held liable for all such losses that naturally arise in the usual course of business. Such damages are called ordinary damages. However, special damages are those which arise in unusual circumstances affecting the aggrieved party and such damages are recoverable only when the special circumstances were

brought to the knowledge of the defendant. If no special notice is given, then the aggrieved party can only claim the ordinary damages.

In the given case, Seema was to earn an exceptional profit out of the sales made at the exhibition, however she never informed about it to the railway authorities. Since the goods were delivered after the conclusion of the exhibition, therefore Seema can recover only the losses arising in the ordinary course of business. Since no notice about special circumstances was given to railways authorities, she could not recover the loss of profits.

16 - Mr. Chetan was travelling to Manali with his wife by bus of Himalayan Travels Pvt. Ltd. Due to some technical default in the bus, the driver has to stop the bus in a mid-way in cold night. The driver advised the passengers to get to the shelter in the nearest hotel which was at a distance of only one kilometer from that place. The wife of Mr. Chetan caught cold and fell ill due to being asked to get down and she had to walk in cold night to reach hotel. Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife. Explain, whether Mr. Chetan would get compensation for which he filed the suit under the Indian Contract Act, 1872?

1)a)4m, MDTP5, 1)a)i)5m, MTP1, Sept2024, 1)a)4m, MTP2, June2023,
1)a)4m, MTP1, June2022, ICAI Module

Ans - Section 73 of Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. But such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

In the instant case, Mr. Chetan filed the suit against Himalayan Travels Pvt. Ltd. for damages for the personal inconvenience, hotel charges and medical treatment for his wife.

On the basis of above provisions and facts of the case, it can be said that Mr. Chetan can claim damages for the personal inconvenience and hotel charges but not for medical treatment for his wife because it is a remote or indirect loss.

15 - How is a contract is discharged under the Indian Contract Act, 1872 and what are the different ways in which the obligations created by a contract can come to an end?

5)c)6m, MDTP5, 5)c)6m, MTP1, Sept, 2024, 2)a)7m, MTP1, June2021, 2)a)7m, MTP1, June2020,
2)a)7m, MTP2, June2019, 2)a)7m, MTP1, June2018

Ans - A contract is discharged when the obligations created by it come to an end. A contract may be discharged in any one of the following ways:

i) Discharge by performance: It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

1) Actual performance; or (2) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

ii) Discharge by mutual agreement: Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed.

iii) Discharge by impossibility of performance: The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:

- a) an unforeseen change in law;
- b) the destruction of the subject-matter essential to that performance;
- c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady;
- d) the declaration of a war (Section 56).

(iv) Discharge by lapse of time: A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.

(v) Discharge by operation of law: A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.

(vi) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks the promise

the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

(vii) Promisee may waive or remit performance of promise: Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit. In other words, a contract may be discharged by remission. (Section 63)

(viii) Effects of neglect of promisee to afford promisor reasonable facilities for performance: If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

(ix) Merger of rights: Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

14 - "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Also, discuss the effect of anticipatory breach of contracts under the Indian Contract Act, 1872.

3)c)6m, MDTP6, 3)c)6m, MDTP1, 3)c)6m, MTP2, Sept2024, 3)c)6m, MTP1, June2024, 3)b)7m, MTP1, June2023, RTP, June2022, 2)a)7m, MTP1, Dec2021, 2)a)7m, MTP2, June2021, 2)a)7m, MTP1, Dec2020, 2)a)7m, MTP1, Dec2019, 2)a)7m, MTP1, June2019, RTP, Dec2018, ICAI Module

OR

Where a party to a contract refuses altogether to perform, or is disabled from performing his part of it, the other party has a right to rescind it. Discuss this statement and the effects of such refusal under the provisions of The Indian Contract Act, 1872

5)c)6m, MDTP9, 5)c)6m, June2024

Ans - An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

Effect of Anticipatory Breach: The promisee is excused from performance or from further performance. Further he gets an option:

(1) To either treat the contract as rescinded and sue the other party for damages for breach of contract immediately without waiting until the due date of performance; or

(2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance. But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration, may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

OR

Add - Anticipatory breach of a contract may take either of the following two ways:

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

Section 39 of the Indian Contract Act deals with anticipatory breach of contract and provides as follows:

"When a party to a contract has refused to perform or disable himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance."

13 - Rahul was a Disk Jockey at a five-star hotel. As per the contract, he is supposed to perform every weekend. (i.e. twice a week). Rahul will be paid ` 2,500 per day. However, after a month, Rahul willfully absents himself from the performance. Taking into account the provisions of the Indian Contract Act, 1872, answer the following:

- (i) Does the hotel have the right to end the contract?
- (ii). If the hotel sends out a mail to Rahul that they are interested to continue the contract and Rahul accepts, can the hotel rescind the contract after a month on this ground subsequently?
- (iii) In which of the case - (termination of contract or continuance of contract) can the hotel claim damages that it had suffered as a result of this breach? **RTP, June 2024**

OR

Sheena was a classical dancer. She entered into an agreement with Shital Vidya Mandir for 60 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ` 10,000/- per performance. However, after a month, she was absent

without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

- (i) Whether the management of Shital Vidya Mandir has right to terminate the contract?
- (ii) If the management of Shital Vidya Mandir informed Sheena about its continuance, can the management still rescind the contract after a month on this ground subsequently?
- (iii) Can the Shital Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?

1)a)4m, June2022

Ans - By analysing Section 39 of the Indian Contract Act, 1872, it is understood that when a party to a contract has refused to perform or disabled himself from performing his promise entirely, the following two rights accrue to the aggrieved party (promisee):

- (a) To terminate the contract
- (b) To indicate by words or by conduct that he is interested in its continuance.

In either of the two cases, the promisee would be able to claim damages that he suffers.

In the given case, (i) Yes, the hotel has the right to end the contract with Rahul, the DJ.

(ii) The hotel has the right to continue the contract with Rahul. But once this right is exercised, it cannot subsequently rescind the contract on this ground subsequently.

(iii) In both the cases, the hotel (promisee) is entitled to claim damages that has been suffered as a result of breach.

OR

Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety the promisee may put an end to the contract unless he had signified, by words or conduct his acquiesce in its continuance. Further, in term of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

(i) Since, Sheena could not perform as per the terms of contract, Shital Vidya Mandir can terminate the contract.

(ii) In the second situation, the management of Shital Vidya Mandir informed Sheena about the continuance of the contract. Hence, the management cannot now rescind the contract after a month on this ground subsequently.

(iii) As per Section 75, Shital Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

12 - Nitesh Gupta is constructing his house. For this purpose, he entered in a contract with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House has two Lorries of 5,000 brick capacity. On 12th August 2023, one of the Lorries was not in working condition so M/s Baba Brick House supplied only 5,000 bricks and promised Nitesh Gupta to supply rest 5,000 bricks on next day. Nitesh Gupta wants to cancel the contract, as M/s Baba Brick House did not supply the bricks as per the contract. M/s Baba Brick House gave the plea that no fault has been made from its part, hence contract should not be cancelled. In this situation, whether Nitesh Gupta can avoid the contract under Indian Contract Act, 1872? 4)a)i)4m,MTP1,June2024

Ans - "Performance of Contract" means fulfilment of obligations to the contract. According to Section 37 of Indian Contract Act, 1872, the parties to a contract must either perform, or offer to perform, their respective promises unless such performance is dispensed with or excused under the provisions of the Contract Act or of any other law. Further, the performance should be for whole obligations. Part delivery cannot be considered as valid performance.

In the instant case, Nitesh Gupta contracted with M/s Baba Brick House to supply of 10,000 bricks on 12th August 2023. M/s Baba Brick House had only two Lorries of 5,000 brick capacity. But on the agreed date one lorry was not in working condition so only 5,000 bricks were supplied on 12th August 2023 and promised to supply rest 5,000 bricks on next day.

After taking into account the above provisions and facts, Plea of M/s Baba Brick House cannot be considered. Performance should be for whole obligation. Hence, part performance by M/s Baba Brick House cannot be taken as valid performance. Nitesh Gupta is right in avoiding the contract.

11 - A & B entered into a contract to supply unique item, alternate of which is not available in the market. A refused to supply the agreed unique item to B. What directions could be given by the court for breach of such contract?

1)a)iii)3m,MDTP3, 1)a)iii)2m,MTP2,June2024, 3)c)iii)2m,Dec2020

Ans - Where there is a breach of contract for supply of a unique item, mere monetary damages may not be an adequate remedy for the other party. In such a case, the court may give order for

specific performance and direct the party in breach to carry out his promise according to the terms of contract. Here, in this case, the court may direct A to supply the item to B because the refusal to supply the agreed unique item cannot be compensated through money.

10 - M Ltd. contract with Shanti Traders to make and deliver certain machinery to them by 30th June 2023 for ` 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ` 12.75 lakhs. Due to this, Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act, 1872.

4)a)7m,MDTP3, 4)a)7m,MTP2,June2024, 3)c)6m,MTP1,Dec2019, 3)c)6m,June2018, RTP,June2018

Ans - Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him there by which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non - performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd. is obliged to compensate for the loss of ` 1.25 lakh (i.e. ` 12.75 minus ` 11.50 = ` 1.25 lakh) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd., knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise, M Ltd is not liable.

09 - What do you mean by Quantum Meruit and state the cases where the claim for Quantum Meruit arises?

6)b)6m,MDTP3, 6)b)6m,MTP2,June2024, RTP,June2020

Ans - Quantum Meruit: Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. Quantum Meruit i.e. as much as the party doing the service has deserved. It covers a case where the party injured by the breach had at the time of breach done part but not all of the work which he is bound to do under the contract and seeks to be compensated for the value of the work done. For the application of this doctrine, two conditions must be fulfilled:

- (1) It is only available if the original contract has been discharged.
- (2) The claim must be brought by a party not in default.

The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done. Damages are compensatory in nature while quantum meruit is restitutory. It is but reasonable compensation awarded on implication of a contract to remunerate.

The claim for quantum meruit arises in the following cases:

- (a) When an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) Where there is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons or refuses to perform the contract.
- (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.
- (f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

08 - On 1st March 2023, T Readymade Dress Garments, Shimla enters into a contract with J Readymade Garments, Jaipur for the supply of different sizes of shirts 'S' (Small), 'M' (Medium), and 'L' (Large). As per the terms of the contract, 300 pieces of each category i.e. 'S' @ `900; 'M' @ 1,000 and 'L' @ 1,100 per piece have to be supplied on or before 31st May, 2023.

However, on 1st May, 2023, T Readymade Dress Garments, Shimla informed J Readymade Garments, Jaipur that the firm is not willing to supply the shirts at the above rate due to

the rise of prices in the raw material cost. In the meantime, prices for similar shirts have gone up in the market to the tune of ` 1,000; ` 1,100; and ` 1,200 for 'S', 'M' and 'L' sizes respectively.

Examine the rights of J Readymade Garments, Jaipur in this regard as per the provisions of the Indian Contract Act, of 1872.

3)b)ii)3m, Dec2023

Ans - As per the provisions of Section 39 of the Indian Contract Act, 1872, when a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

J Readymade Garments in the given situation has two options, out of which he has to select any one:

- i) Either to treat the contract as rescinded and sue T Readymade Dress Garments for damages from breach of contract immediately without waiting until the due date of performance or
- ii) He may elect not to rescind but to treat the contract as still operative and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

Important Note: The answer can also be given as per Section 73 of the Indian Contract Act, 1872 which lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

In the instant case, J Readymade Garments, Jaipur would be entitled to get the damages i.e. difference between the contract price and the market price on the day of default from T Readymade Dress Garments, Shimla. In other words, the amount of damages would be ` 90,000 [300 piece @ ` 100 (Small), 300 piece @ ` 100 (Medium) and 300 piece @ ` 100 (Large)].

07 - Shital was a classical dancer. She entered into an agreement with Sharad Vidya Mandir for 50 dance performances. As per the contract, she was supposed to perform every weekend and she will be paid ` 8,000/- per performance. However, after a month, she was absent without informing, due to her personal reasons. Answer the following questions as per the Indian Contract Act, 1872.

- (i) Whether the management of Sharad Vidya Mandir has right to terminate the contract?

(ii) If the management of Sharad Vidya Mandir informed Shital about its continuance, can the management still rescind the contract after a month on this ground subsequently?

(iii) Can the Sharad Vidya Mandir claim damages that it has suffered because of this breach in any of the above cases?

RTP, Dec2023

Ans - Section 39 of the Indian Contract Act, 1872 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he had signified, by words or conduct his acquiesce in its continuance. Further, in terms of Section 40, the promisee shall be required to perform personally, if there is such an apparent intention of the parties.

Also, as per Section 75 of the Act, a person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non-fulfilment of the contract.

Therefore, in the instant case,

i) Since, Shital could not perform as per the terms of contract, Sharad Vidya Mandir can terminate the contract.

ii) In the second situation, the management of Sharad Vidya Mandir informed Shital about the continuance of the contract. Hence, the management cannot rescind the contract after a month on this ground subsequently.

iii) As per Section 75, Sharad Vidya Mandir can claim damages that it has suffered because of this breach in part (i).

06 - "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain the statement by differentiating between liquidated damages and penalty with reference to provisions of the Indian Contract Act, 1872.

6)a)5m, MTP2, Dec2023, 6)a)5m, June2022, RTP, June2021, ICAI Module

Ans - Liquidated damages is a genuine pre-estimate of compensation of damage for certain anticipated breach of contract. This estimate is agreed to between parties to avoid at a later date detailed calculation and the necessity to convince outside parties.

Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties.

Distinction between liquidated damages and penalty

Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

Q5 - Give the circumstances as to when "Vindictive or Exemplary Damages" may be awarded for breach of a contract.

RTP, Dec2022

Ans - Vindictive or Exemplary damages

These damages may be awarded only in two cases:

- (a) for breach of promise to marry because it causes injury to his or her feelings; and
- (b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him.

A business man whose credit has suffered will get exemplary damages even if he has sustained no pecuniary loss. But a non-trader cannot get heavy damages in the like circumstances, unless the damages are alleged and proved as special damages. (*Gibbons v West Minister Bank*)

04 - Mr. Murari owes payment of 3 bills to Mr. Girdhari as on 31st March, 2020. (i) ` 12,120 which was due in May 2016. (ii) ` 5,650 which was due in August 2018 (iii) ` 9,680 which was due in May 2019. Mr. Murari made payment on 1st April 2020 as below without any notice of how to appropriate them:

- i) A cheque of ` 9,680
- ii) A cheque of ` 15,000

Advice under the provisions of the Indian Contract Act, 1872.

3)b)6m, MTP2, Dec2021

Ans - If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61 of the Indian Contract Act, 1872. The debtor has, at the time of payment, the right of appropriating the payment. In default of debtor, the creditor has option of election and in default of either the law will allow appropriation of debts in order of time.

In the present case, Mr. Murari had made two payments by way of two cheques. One cheque was exactly the amount of the bill drawn. It would be understood even though not specifically appropriated by Mr. Murari that it will be against the bill of exact amount. Hence cheque of Rs. 9,680 will be appropriated against the bill of ` 9,680 which was due in May 2019.

Cheque of Rs. 15000 can be appropriated against any lawful debt which is due even though the same is time-barred.

Hence, Mr. Girdhari can appropriate the same against the debt of Rs. 12,120 which was due in 2016 and balance against Rs. 5650 which was due in August 2018.

03 - "When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract".

Explain.

6)a)5m, MTP1, June2021, 6)a)5m, MTP1, June2020

Ans - Effect of a Refusal of Party to Perform Promise

According to Section 39, when a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance.

From language of Section 39 it is clear that in the case under consideration, the following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) to indicate by words or by conduct that he is interested in its continuance.

In case the promisee decides to continue the contract, he would not be entitled to put an end to the contract on this ground subsequently. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

Q2 - 'X' entered into a contract with 'Y' to supply him 1,000 water bottles @ ` 5.00 per water bottle, to be delivered at a specified time. Thereafter, 'X' contracts with 'Z' for the purchase of 1,000 water bottles @ ` 4.50 per water bottle, and at the same time told 'Z' that he did so for the purpose of performing his contract entered into with 'Y'. 'Z' failed to perform his contract in due course and market price of each water bottle on that day was ` 5.25 per water bottle. Consequently, 'X' could not procure any water bottle and 'Y' rescinded the contract. Calculate the amount of damages which 'X' could claim from 'Z' in the circumstances? What would be your answer if 'Z' had not informed about the 'Y's contract? Explain with reference to the provisions of the Indian Contract Act, 1872.

RTP, Dec2020, 3)b)6m, MTP2, June2019, 3)b)6m, MTP2, Dec2018, 3)b)7m, MTP1, June2018, ICAI Module

Ans - BREACH OF CONTRACT- DAMAGES: Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.

The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated.

The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ` 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y') being the amount of profit 'X' would have made by the performance of his contract with 'Y'.

If 'X' had not informed 'Z' of 'Y's contract, then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ` 750/- (i.e. 1000 water bottles x 0.75 paise).

Q1 - What is the law relating to determination of compensation, on breach of contract, contained in section 73 of the Indian Contract Act, 1872?

RTP, Dec2019, 6)a)5m, MTP1, Dec2018

Ans - Compensation on Breach of Contract: Section 73 of the Indian Contract Act, 1872 provides that when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. The explanation to the section further provides that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.


-----xxx-----

IMP VIDEOS – SCAN QR

CA Foundation May 2025

LAW IMP TOPICS
100% PASS HO
JAOGE ITNA KARLO BS

FREE FULLY UPDATED
QUESTION BANK SOFT COPY



CA Foundation WALO

**LAW KAISE YAAD
KARE ?**
SHORTCUT SIKHO


100% TRIED AND TESTED
MUST WATCH



CA Foundation WALO

**LAW ANS WRITING
NAHI HOTA SIR?**
KAISE LIKHNA HAI?

FREE GIFT - GET ALL
VARIETIES OF ANSWER HERE



CA Foundation WALO

**KEYWORDS KA KYA
CHAKKAR HAI?**
MAAN SE CHALEGA!

KEYWORDS KA JHANJHAT
KHATAM ISKE BAAD



NADAN PARINDO

**1ST YA 2ND ATTEMPT
MAI KAISE NIKALEGA**
APKA CA FOUNDATION

3RD ATTEMPT HAI TOH KAISE
MUMKIN HAI?

