

Consequences for Breach of Contract

ORDINARY & SPECIAL DAMAGES · REMOTE LOSS · MITIGATION · RESCISSION · PENALTY / STIPULATED SUM

Comprehensive Exam Revision Handout

1 CORE CONCEPT — BREACH & DAMAGES



Breach of contract occurs when a party **refuses or fails to perform** his part of the contract, other than where performance is **excused by law**. Of the remedies available, **damages** are the most frequently sought.

Purpose

Put the aggrieved party in the **same financial position** as if the contract had been performed — not to punish.

Sale of goods — measure

General rule: **contract price - market price at the date of breach**.

Anticipatory breach

Party communicates in advance that he will not perform → aggrieved party may claim **now** or **wait** for the due date.

Author returns advance and refuses manuscript.

2 COMPENSATION FOR BREACH — S. 73 RULES



✓ Ordinary damages

Loss which **naturally arose in the usual course of things** from the breach.

Caterer fails; substitute costs Rs. 93,000 vs Rs. 85,000 → Rs. 8,000.
Rice Rs. 150/kg, market Rs. 130 → Rs. 20/kg × 500 = Rs. 10,000.

✓ Special damages

Loss which the parties **knew, when they made the contract**, to be likely to result from breach.

Builder knew of letting to Qasim → pays rebuilding cost + lost rent + compensation paid to Qasim.
Seller told the iron was for a resale → pays lost profit Rs. 100,000.

✗ Remote / indirect loss

Not compensated — too remote for it to be fair to hold the defendant liable.

Wheat resale profit to Haris (unknown to seller) not recoverable; only (9,500 - 8,000) × 50 = Rs. 75,000.
Delayed machine: average mill profit yes; lost Government contract no.

↓ Duty to mitigate

The **means of remedying the inconvenience** must be considered. Aggrieved party must take **reasonable steps to minimise loss**; avoidable loss not recoverable.

Could buy materials for Rs. 600,000 vs 500,000 → recovers only Rs. 100,000, not Rs. 200,000 profit.
Tenant idle 8 months though other shops available → only advance refunded.

Quasi-contract S. 73

Failure to discharge an obligation **resembling a contract** → same compensation **as if a contract had been broken**.

Goods left by mistake are consumed → pay market price.

Party rightly rescinding S. 75

A person who **rightly rescinds** is entitled to compensation for damage from the **non-fulfilment**.

Theatre manager rescinds when singer absents → claims compensation.

3 PROCEDURE / ROADMAP — CALCULATING DAMAGES



Breach established (not excused by law)

Is the loss **natural** (usual course)? → **Ordinary damages**

Was it **known to both** at contract? → **Special damages**

Otherwise **remote** → excluded

Deduct loss that could be **avoided by mitigation**

Penalty clause? → **cap at stipulated sum (S. 74)**

Market-price illustrations from the study text

Ship sale broken by buyer: Rs. 6bn - Rs. 5.8bn obtainable = **Rs. 0.2bn**

Ship hire broken by owner: Rs. 32m market hire - Rs. 28m = **Rs. 4m**

Delayed cargo: price at due arrival Rs. 6m - at actual arrival Rs. 5m = **Rs. 1m**

Resale above market: use market price (Rs. 120), not resale price (Rs. 125) → **Rs. 20/kg**

Defective repairs: cost of making repairs conform to contract

Warranty chain: compensation paid to sub-buyer reimbursed by original seller

4 COMPENSATION WHERE PENALTY IS STIPULATED S. 74



Parties may stipulate a **specified sum payable on breach**. It may or may not be a **penalty** — a sum is a penalty when it is **extravagant and disproportionate** to the likely damage. Either way, the Court awards only **reasonable compensation NOT exceeding the amount named** — the stipulated sum is the **maximum limit**.

Penalty — reasonable compensation only

- Pay Rs. 2m if Rs. 1m not paid on the day
- Rs. 1m loan with a **Rs. 2m bond** in instalments, whole due on default
- Deliver **20 tons** if 10 tons not delivered
- Increased interest** from default (12% → 75%)

Not a penalty — enforceable as per terms

Rs. 1m loan in 5 equal instalments; **whole becomes due** on default — **no extra amount** is payable.

Goodwill restraint sum

Surgeon agrees to pay Rs. 5m if he practises in Peshawar → buyer gets compensation **not exceeding Rs. 5m** as the Court considers reasonable.

Basis	Sum stipulated in contract (S. 74)	No sum stipulated (S. 73)
Measure	Reasonable compensation, capped at stipulated amount, whether or not actual loss is proved	Ordinary + special damages; no remote loss; mitigation considered

5 APPLICATION TO SCENARIOS



Supplier fails; contractor pays penalty

Recover **price difference**; Rs. 50,000 third-party penalty **only if supplier knew** of it at contract.

Author backs out

Publisher recovers **campaign cost**; pre-order profit (not contemplated in June) **not recoverable**.

Manufacturer (third party) fails

Seller **still liable** to buyer; recovers ordinary damages (and special if known) from manufacturer.

Client withholds passwords

Prevention → voidable at IT firm's option; claim staff salary incurred till repudiation.

Buyer withholds bank guarantee

Nature of transaction: **security first**, then delivery → buyer in breach, must compensate.

Books arrive after exhibition

Time essential; known profit → rescind and claim ordinary + **special damages (Rs. 5m)**, or accept with notice.

6 COMMON EXAM TRAPS



! Court awards ~~the full stipulated sum~~ → **reasonable compensation not exceeding** it.

! Special damages need knowledge **at the time of making the contract** — ~~later knowledge~~ doesn't count.

! Acceleration clause (whole loan due on default, no extra) is ~~a penalty~~ → **not a penalty**.

! Quasi-contract damages are the **same as any other contract**.

! Increased interest from date of default **may be a penalty**.

! Lost profit of a business idle by choice → **not recoverable** (failure to mitigate).

! Measure uses market price at **date of breach**, not buyer's ~~resale price~~.

! Labour strike at supplier / third-party default → ~~supervening impossibility~~ → **still liable**.

7 QUICK REVISION BOX



S. 73

Ordinary + special; no remote; mitigation; quasi-contract

S. 74

Stipulated sum / penalty → reasonable, capped

S. 75

Rightful rescission → compensation

CP - MP

Sale of goods measure at date of breach

Six principles (S. 73-75): Natural loss ✓ · Contemplated loss ✓ · Remote loss ✗ · Quasi-contract = contract · Mitigate ✓ · Rightful rescinder compensated ✓ — and stipulated sum = **ceiling**.