

## Chapter 5: The Indian Contract Act, 1872

**Definitions [2]**

<table>
<thead>
<tr>
<th>Sec</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>2(a)</td>
<td><strong>Proposal</strong>&lt;br&gt;When one person signifies to another,&lt;br&gt;a. his willingness to do or to abstain from doing anything,&lt;br&gt;b. with a view to obtaining the assent of that other to such act or abstinence,&lt;br&gt;he is said to make a proposal.</td>
</tr>
<tr>
<td>2(b)</td>
<td><strong>Promise</strong>&lt;br&gt;a. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted.&lt;br&gt;b. A proposal, when accepted, becomes a promise.</td>
</tr>
<tr>
<td>2(c)</td>
<td><strong>Promisor &amp; Promisee</strong>&lt;br&gt;a. The person making the proposal is called the “promisor”,&lt;br&gt;b. The person accepting the proposal is called the “promisee”</td>
</tr>
<tr>
<td>2(d)</td>
<td><strong>Consideration</strong>&lt;br&gt;When, at the desire of the promisor, the promisee or any other person has:&lt;br&gt;a. done or abstained from doing, or does or abstains from doing, or&lt;br&gt;b. promises to do or to abstain from doing, something,&lt;br&gt;such act or abstinence or promise is called a consideration for the promise</td>
</tr>
<tr>
<td>2(e)</td>
<td><strong>Agreement</strong>&lt;br&gt;Every promise and every set of promises, forming the consideration for each other, is an agreement.</td>
</tr>
<tr>
<td>2(g)</td>
<td><strong>Void Agreement</strong>&lt;br&gt;An agreement not enforceable by law is said to be void</td>
</tr>
<tr>
<td>2(h)</td>
<td><strong>Contract</strong>&lt;br&gt;An agreement enforceable by law is a contract.</td>
</tr>
<tr>
<td>2(i)</td>
<td><strong>Voidable Contract</strong>&lt;br&gt;An agreement which 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, is a voidable contract.</td>
</tr>
<tr>
<td>2(j)</td>
<td><strong>Void Contract</strong>&lt;br&gt;A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.</td>
</tr>
</tbody>
</table>

### Essentials of Valid Contract [10]

**Agreement**

In order to constitute a contract, there must be an agreement in first place. An agreement in turn is composed of two elements-offer and acceptance. Thus there must be at least two parties-one making the offer and another accepting it. The terms of offer must be definite and the acceptance must be absolute and unconditional.
The Indian Contract Act, 1872

Chapter 5

Chart for Understanding

Agreement

- Offer by Offeror
- Acceptance by Offeree
- Offer must be definite
- It must be unconditional

Legal Relationship

The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts.

Chart for Understanding

Example of Legal Relationship

- Husband promising his wife to buy her a ‘necklace’ on occasion of her birthday is not a contract.
- A promises B to build House for A in exchange of money is contract and therefore create legal relationship

Lawful consideration

The agreement must be supported by a lawful consideration. Consideration means ‘something in return’. ‘Something in return’ may be an act or abstinence. But it must be real and lawful.

Chart for Understanding

Example of Lawful consideration

- Giving money in exchange of goods bought is lawful consideration.
- Bringing stars from sky is not real. Hence cannot be considered as lawful consideration.

Capable Parties

The parties to an agreement must be capable of entering into a contract. A person is considered incompetent if he is (a) not 18 or not above 18 years of age (b) of unsound mind (c) disqualified from contracting by any law to which he is subject.

Chart for Understanding

Example of Incompetent parties

- Not 18 or not above 18 years of age
- Person of unsound mind
- Person Disqualified by law
Lawful Purpose
The object of agreement must be lawful.

Chart for Understanding

Example of Lawful Purpose

C pays fees to his Lawyer for fighting his case is a lawful purpose
L asks M to kill D in exchange of 50,000 Rs is Unlawful purpose

Free Consent
The consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation.

Chart for Understanding

Example of Free Consent

A made proposal to B asking his consent in writing without any pressure, is free consent
Z forced X to sign a promissory note at the point of pistol, is not Free Consent

Valid Agreement
The agreement not expressly declared void or illegal by law. The terms of agreement must be certain and capable of performance.

Chart for Understanding

Example of Valid Agreement

D agrees to sell C garments. The type, quality, value etc. are not discussed. The agreement cannot be enforced as terms are uncertain.
A Promises B to bring rainfall through magic. Such agreement cannot be enforced

Legal formalities
Where nature of agreement is such that it requires compliance of certain formalities, such requirements should be fulfilled. A contract may require registration in addition of being in writing. However as regards to legal effects, an oral contract has same weightage as a contract in writing.

Distinction Between Agreement & Contract

<table>
<thead>
<tr>
<th>Basic</th>
<th>Agreement</th>
<th>Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning:</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Contract or Agreement to do Impossible Act is Void [56]

**Meaning**
Contingent agreements to do or not to do anything if an impossible event happens, are void, even if the impossibility of the event is known or not known to the parties at the time when agreement is made.

**Compensation shall be given when fact is known**

If a person promises to do particular act:
- knowing that such act is impossible or unlawful &
- the person to whom such promise is made does not know the fact that such act is unlawful or impossible

than the promisor must make compensation for any loss which the promisee has sustained due to non-performance of the promise.

**Examples**

- A agrees to pay B 1,000 rupees if two-straight lines should enclose a space. The agreement is void.
- A agrees to pay B 2,000 rupees if B will marry A’s daughter C. C was dead at the time of the agreement. The agreement is void.

**Uncertain Agreement [29]**

Agreements,
- the meaning of which is not certain, or
- not capable of being made certain, are void.

**Chart for Understanding**

**Example of Uncertain Agreement**

- A agrees to sell to B “all the grain in A’s granary at Ramnagar @ 40 per Kg.” There is no uncertainty here to make the agreement void.
- A agrees to sell to B “my white house for Rs. 5 cr or Rs. 10 cr”. There agreement shows two prices making it uncertain. So agreement is void.
### Classification of Contracts [2 and 9]

#### Creation Basis
- **Express Contract**
  - Contract by Spoken or written words.
- **Implied Contract**
  - Contract by conduct of person or circumstances of cases.

#### Execution Basis
- **Executed Contract**
  - In which both the parties fulfilled their obligations.
- **Executory Contract**
  - In which both the parties not fulfilled their obligations.
- **Partly Executed and Partly Executory Contract**

#### Enforceability Basis
- **Valid Contract**
- **Void Contract**
- **Void Agreement**
- **Voidable Contract**
- **Illegal Agreement**

### Offer or Proposal

**Rules of Valid Offer or Proposal**

- **Offer Must Be Communicated**

#### Carlill Vs. Carbolic Smoke Ball Co.

1. It advertised to give reward of $100 to person who contracted influenza, after using its Smoke balls.

2. Mrs. Carlill used smoke balls but contracted influenza.

3. Court held that Mrs. Carlill was entitled to a reward.

**Fact of The Case**

a. A pharmaceutical Company advertised that it would give a reward of $100 to any person who contracted influenza, after using its Smoke balls for certain period according to the directions.

b. Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. She claimed reward but Company resisted.

**Question**

Whether Company’s resistance to give reward is tenable?

**Decision Of Court**

It was held that the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same. Mrs Carlill was entitled to a reward of $100 as she had performed the condition for acceptance.
Boulton Vs. Jones

Fact of The Case

a. J offered to purchase 50 feet leather from Z.
b. Z in meantime sold his business to B.
c. So instead of Z, B supplied to leather to J.
d. J refused to accept the leather.

Question
Can J refuse such offer?

Decision Of Court
It was held that where an offer is made to specified person(Z), it is a specific offer. Only that person can accept such specific offer, as it is special and exclusive to him. J can refuse to accept the leather as he had not made offer to B.

Lalman Shukla Vs. Gauri Dutt

1. G’s Nephew was missing
2. L went to search the boy

Fact of The Case

a. G’s nephew was missing.
b. L who was Munim of G went in search of missing boy.
c. Meanwhile G issued handbills offering reward of Rs. 501 to anyone who trace the boy.
d. L found boy and brought him home.

Question
Whether L is eligible to receive reward?

Decision Of Court
It was held that the reward for missing the child cannot be claimed by a person who traced the child without any knowledge of the announcement. L shall not be eligible to receive reward.

2. Communication of Complete Offer/Proposal

© CA Darshan D. Khare
Handerson Vs. Stevenson

1. X purchased steamer ticket
   - Conditions were printed on back of ticket. It excluded company from liability of loss of luggage

2. X's Luggage was lost
   - X is entitled to recover the damages as nothing written on front of the ticket to draw attention

Fact of The Case
a. X purchased steamer ticket for travelling from Dablin to White Haven
b. The conditions were printed on back of the ticket. One of the conditions excludes company from liability of any loss, injury or delay to passenger or their luggage
c. There was nothing written on front of the ticket to draw attention of the passenger at conditions on the back of the tickets
d. X's Luggage was lost due to negligence of servants of the shipping company

Question
- Whether X is entitled to recover the damages?

Decision Of Court
- It was held that there was nothing written on front of the ticket to draw attention of the passenger at conditions on the back of the tickets. Where a written document is presented to a party for acceptance, a reasonably sufficient notice shall be given of the presence of terms and conditions. Therefore X is entitled to recover the damages.

Olley Vs. Malborough Court Ltd.

1. Mr. X & Mrs. X hired hotel room
2. They found a notice on the wall excluding owner's liability for loss by theft of articles
3. Mr. X & Mrs. X's luggage was stolen
4. X is entitled to recover the damages as terms reviled after accepting the contract

Fact of The Case
a. Mr. X & Mrs. X hired room in hotel
b. When they entered the room they found a notice on the wall disclaiming the owner's liability for any loss arising by theft of articles.
c. Some of their items were stolen
Question
Can Mr. X & Mrs. X claim damages?

Decision Of Court
It was held that the terms of contract concluded before entering the room. Any terms reviled after accepting the contract will be considered void and ineffective. Hence Mr. X & Mrs. X can claim damages.

Parker Vs. S.E. Rail Co.

1. P deposited his bags in the cloakroom at a railway station and accepted receipt for same

2. Terms and condition of receipt had limited liability of bags up to $10

3. He claimed the actual value of the bag amounting to $24

4. P will only receive $10 as attention to condition was attracted.

Fact of The Case
a. P deposited his bags in the cloakroom at a railway station.
b. On the face of the receipt the words “See Back” are printed.
c. One of the conditions printed on back was “the liability of the railway company shall be limited to $10 for any package.”
d. P’s bag was lost. He claimed the actual value of the bag amounting to $24.

Question
Can P claim $24 for lost Bag?

Decision Of Court
It was held that if the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions. Decision was in the favour of P.

Felth house Vs. Bindley

1. A offer to sell white horse to B. if no reply is given within 7 days A will assume that contract is being executed.

2. B did not reply on matter

3. A thought B accepted the contract

4. A cannot enforce contract as his assumption was wrong

3. Offer Must not be Burden on Offeree
An offer must not be burden on offeree to communicate his decision. An offer must not contain any term the non-compliance of which amounts to acceptance.
The Indian Contract Act, 1872

**Fact of The Case**

a. A wrote to B "I will sell you my horse for Rs. 500. If I do not receive reply by next Sunday, I shall assume that you have accepted the offer."

b. B did not reply.

**Question**

Can A enforce the contract?

**Decision Of Court**

It was held that A cannot enforce the contract as offer must not be burden on offeree to communicate his decision. An offer must not contain any term the non-compliance of which amounts to acceptance.

---

4. **Cross offer do not Conclude a Contract**

Two offers which are identical in all respect made by two persons to each other ignorance of each other’s offer known as “Cross Offer”. Cross offer do not conclude a contract.

---

5. **Chart for Understanding**

**Example of Cross Offer**

- A agrees to sell something to B on certain terms
- B offers A to Buy same thing on same terms

---

5. **Counter Offer**

A counter offer amounts to rejection of the original offer.

---

6. **Offer Vs. Invitation to Offer Vs. Intention to Offer**

<table>
<thead>
<tr>
<th>Offer/Proposal</th>
<th>Invitation to Offer</th>
<th>Intention to Offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer is final expression of willingness to make a person bound by his offer if the other person accepts it.</td>
<td>If a person without expressing his final willingness proposes certain terms on which he is willing to negotiate, it is called as invitation to offer and not offer.</td>
<td>The declaration indicating offer may be made or invited in future does not amount to offer.</td>
</tr>
</tbody>
</table>

**Example:**

- Seller offers to sell her house for $150,000, to be paid in 60 days
- Buyer receives the offer and gives Seller a counter offer of $140,000, payable in 45 days
Pharmaceutical Society of Great Britain Vs. Boot Cash Chemist Ltd.

1. A self-service system was there for purchasing goods.
2. A customer selected the goods but shop owner refuses to sell it.
3. Customer wanted to sue shopkeeper
4. Held customer can’t sue shopkeeper.

Display of goods was not an offer. The Price tag on the goods is invitation to offer.

Fact of The Case
a. Goods displayed in the shop with price tags.
b. A self-service system was there for purchasing goods.
c. One customer selected the goods but shop owner refuses to sell it.

Question
Whether the display of goods amounts to offer? Can customer sue shopkeeper?

Decision Of Court
It was held that the display of goods was not an offer. The Price tag on the goods is invitation to offer. Shopkeeper can refuse to sale good on basis of price tag. Hence customer can’t sue shopkeeper.

Harris Vs. N. Nickerson

1. Auctioneer advertised in a newspaper for sale of office furniture
2. The auction was cancelled.
3. X wanted to sue auctioneer
4. X cannot enforce the contract

Advertisement made by auctioneer was merely expression of intention and not an offer.

Fact of The Case
a. An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day.
b. Mr. X with intention to buy furniture came from a distant place for the auction but the auction was cancelled.

Question
Make Your Own Notes
Whether Mr. X can enforce auction or contract?

**Decision Of Court**

An offer must be distinguished from mere expression of intention. It was held that advertisement made by auctioneer was merely expression of intention and not an offer which could be accepted by travelling to the place of intended sale.

---

**Revocation of Offer / Laps of Offer**

A proposal is revoked due to following reasons:

- **Communication of notice of revocation** by the proposer to the other party;
- By the lapse of the time prescribed in such proposal for its acceptance.
- If no time is so prescribed, by the lapse of a reasonable time, **without communication of the acceptance**;
- By the **failure of the acceptor to fulfill a condition** precedent to acceptance.
- By the **death or insanity of the proposer**, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance.

---

**Acceptance**

**Meaning [2(b)]**

A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something.

**Rules governing acceptance**

1. **Acceptance must be absolute and unqualified**

   As per section 7 of the Act, Acceptance is
   - Valid only when it is absolute and unqualified and
   - Is also expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it must be accepted.

**Chart for Understanding**

**Example of above rule**

- A offers B to buy his motorcycle at Rs 50,000. B accepts it. Such acceptance is absolute and unqualified.
- A offers B to buy his motorcycle at Rs 50,000. But in exchange of A’s offer B asks A to buy his Cycle for Rs 10000. Such acceptance is not absolute and unqualified.

2. **The acceptance must be communicated**

   To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance no acceptance. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. The acceptance must relate specifically to the offer made.

3. **Acceptance must be in the prescribed mode**

   Where the proposal prescribes the mode of acceptance, it must be accepted in that manner. Where the proposal does not prescribe the manner, then it must be accepted in a reasonable manner.
### Chart for Understanding

#### Example of above rule

| L sends letter to M, offering to sell his house. L asks M to reply by telegram. M shall then reply only through telegram |

#### 4. Acceptance in reasonable time

The acceptance must be given within a reasonable time and before the offer lapses.

#### 5. Mere silence is not acceptance

The acceptor should expressly accept the offer. Acceptance can be implied also. Acceptance must be given only by that person to whom it is made, that too only after knowing about the offer made to him.

#### 6. Acceptance by conduct

Acceptance has to be signified either in writing or by word of mouth or by performance of some act. The last of the method, namely `by some act` has to be understood as acceptance by conduct.

##### Example of above rule

Tradesman receives an order from a customer, and the order is executed accordingly by the trader, there is an “acceptance by conduct” of the offer made by the customer. The trader’s subsequent act signifies acceptance.

### Who Can Accept?

<table>
<thead>
<tr>
<th>In Case of Specific Offer</th>
<th>In Case of General Offer</th>
</tr>
</thead>
<tbody>
<tr>
<td>Only that particular person or group of person to whom the specific offer has been made and none else.</td>
<td>Any person if:</td>
</tr>
<tr>
<td></td>
<td>a. He has the knowledge of the offer and</td>
</tr>
<tr>
<td></td>
<td>b. He fulfils the term and conditions of the offer.</td>
</tr>
</tbody>
</table>

### Mode of Acceptance

<table>
<thead>
<tr>
<th>Express Acceptance</th>
<th>Implied Acceptance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Expressly acceptance in writing.</td>
<td>Execute any act result in implied in acceptance.</td>
</tr>
</tbody>
</table>

### Legal Rules for Valid Acceptance [7]

#### General rules relating to Acceptance

1. **Absolute & Unqualified Acceptance**

   The offeree should assent to all the terms of the offer. There must be no variation or reservation i.e. acceptance must be unconditional.
2. Acceptance Must be Communicated

Brodgen Vs. Metropolitan Rly. Co.

1. Draft agreement was sent to the manager of a Railway Company for his approval

2. Manager approved letter but did not dispatch.

3. Contract cannot be said as concluded because Manager has not communicated acceptance

Fact of The Case
a. A draft agreement relating to the supply of coal was sent to the manager of a Railway Company for his approval.
b. The manager put the words “approved” on the agreement. However the manager forgot to dispatch approved copy of the agreement.

Question
Whether the contract is concluded without communicating acceptance?

Decision Of Court
It was held that there was no contract as the Manager had not communicated his acceptance to proposer.

3. Acceptance by Whom?

Powell Vs. Lee

1. A school advertised for filling a vacancy for the post of Headmaster

2. Decision not communicated to A

3. B (A’s Friend) informed A that he was selected but committee changed the decision

4. Committee changed the decision

Mr. A was selected in the interview

B was not authorised to perform such act. Hence contract is void

Fact of The Case
a. A school advertised for filling a vacancy for the post of Headmaster.
b. Managing committee interviewed many people and selected Mr A.
c. However, the decision of the managing committee was not communicated to Mr. A.
d. Mr. B who was the member of the managing committee & also the friend of Mr. A informed Mr. A that he has been selected.
e. In meantime managing committee changed the decision and appointed other person.

<table>
<thead>
<tr>
<th>Question</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whether communication by Mr. B amounts to acceptance? Dose it amounts to valid contract?</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Decision Of Court</th>
</tr>
</thead>
<tbody>
<tr>
<td>It was held that there was no contract between the parties as there was no authorised communication made by the school authority, the person who informed him about his appointment was not authorised to perform such act, and there was no intention to create a contract on the part of the body, the managers.</td>
</tr>
</tbody>
</table>

### 4. Manner of Acceptance

**Manner of Acceptance**

- **No Manner of Acceptance**
  - The offer must be accepted in some usual and reasonable manner.

- **Prescribed manner of Acceptance**
  1. The offer must be accepted in specified manner.
  2. If the offer is not accepted in the prescribed manner, the offeror may reject acceptance within a reasonable time.

### 5. Time Limit for Acceptance

**Time Limit of Acceptance**

- **The offer Does not Prescribe the Time Limit**
  - The offer must be accepted in **reasonable** time.

- **The offer Prescribe the Time Limit**
  - The offer must be accepted within **prescribed** time.

### Ramsgate Victoria Hotels Vs. Montefiore

A person applied for shares in a company in June. He cannot be bound by the allotment made late in November since delay of 6 months in acceptance of application for shares was unreasonable.

### 6. Acceptance Must Be Given Before offer Lapses or Revoked

1. Acceptance can be given only to an existing offer.
2. An offer open for a limited period can be accepted only before expiry of period.
3. An offer can be revoked before acceptance.
4. Acceptance is not valid if it is given after the offer is lapsed or revoked.
5. Acceptance cannot be given before the communication of offer is complete.

### 7. Mode of Acceptance

1. By any act and
2. By omission, intending thereby to, to communicate to the other or which has the effect of communicating it to the other.
Communication of Acceptance and Revocation [4]

Communication of Acceptance

Against offeror
When acceptance is put in course of transmission.

Against the Offeree
When acceptance comes to knowledge of offeror.

Communication of Revocation

Against Maker
When revocation is put in course of transmission.

Against Acceptor
When revocation comes to knowledge of acceptor.

Time Limit for Revocation [5]

<table>
<thead>
<tr>
<th>Revocation Of</th>
<th>Time Limit for Revocation</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer</td>
<td>Before communication of acceptance is complete against offeror.</td>
</tr>
<tr>
<td>Acceptance</td>
<td>Before communication of acceptance is complete against offeree.</td>
</tr>
</tbody>
</table>

Concept Analyser

<table>
<thead>
<tr>
<th>Revocation Of</th>
<th>Date of receipt / posting of Letter of Acceptance</th>
<th>Date of Receipt of letter of Revocation</th>
<th>Which is Valid?</th>
</tr>
</thead>
<tbody>
<tr>
<td>Offer</td>
<td>1st May 2012 (By Offeree)</td>
<td>5th May 2012 (By Offeree)</td>
<td>Offer is valid</td>
</tr>
<tr>
<td>Offer</td>
<td>5th May 2012 (By offeree)</td>
<td>1st May 2012 (By Offeree)</td>
<td>Revocation of Offer is Valid.</td>
</tr>
<tr>
<td>Offer</td>
<td>2nd May 2012 (By Offeree)</td>
<td>2nd May 2012 (By offeree)</td>
<td></td>
</tr>
<tr>
<td>Acceptance</td>
<td>1st May 2012 (By Offeror)</td>
<td>5th May 2012 (By Offeror)</td>
<td>Acceptance / Contract is Valid</td>
</tr>
<tr>
<td>Acceptance</td>
<td>5th May 2012 (By offeror)</td>
<td>1st May 2012 (By Offeror)</td>
<td>Revocation of Acceptance is valid.</td>
</tr>
<tr>
<td>Acceptance</td>
<td>2nd May 2012 (By Offeror)</td>
<td>2nd May 2012 (By Offeror)</td>
<td></td>
</tr>
</tbody>
</table>
Consideration
Meaning [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 abstain from doing something, such an act or abstinence or promise is called consideration for the promise.”

(1) Consideration is the doing or not doing of something which the promisor desires to be done or not done.
(2) Consideration must be at the desire of the promisor.
(3) Consideration may move from one person to any other person.
(4) Consideration may past present or future.
(5) Consideration be not adequate, but should be real.

Essentials of Valid Consideration
Consideration Must Move at Desire of Promisor

**Durga Prasad Vs. Baldeo**

**Fact of The Case**

a. D spent some money for renovation of market on request of collector.
b. After such renovation, a shopkeeper of the market promised to pay commission to D on sale affected by him.
c. On non-performance of such promise by the shopkeeper, D sued him for recovery of money.

**Question**

Whether D can recover money?

**Decision Of Court**

It was held that there was no consideration as money was not spent by plaintiff at request of the defendants, but at instance of third person viz. the collector, thus the contract was Void.
Chinnaya Vs. Rammaya

Fact of The Case
a. A (an old lady) made contract with R (her daughter), that whole of the property shall be gifted to R, if R agrees to pay annuity to C (sister of A).

b. R made a contract with C agreeing to pay her the annuities.

c. On death of A, R refused to pay annuity to C on ground that nothing was received from C as consideration for annuity & agreement between C & R was void.

Question
Whether the contention of R is valid?

Decision Of Court
It was held that consideration need not necessarily move from promisee, it may move any other person. Hence contention of R is not valid.

2. Adequacy of Consideration is not Required
1. There must be consideration in every contract.
2. However, adequacy of consideration is not required.
3. Even if it is proved that such consideration is inadequate, the contract is not void.
4. The fact of inadequacy of consideration shall be given due weightage while determining whether the consent of the promisor was freely given or not.

3. Consideration must be Different from Promisee’s Existing Obligation
Ramachandra Chintaman Vs. Kaluraju

1. Client promised to pay additional amount to his lawyer if he wins

The suit was successful

Lawyer ask for additional amount

Lawyer cannot ask for additional amount as was under a pre-existing contractual obligation
5.18

The Indian Contract Act, 1872

Chapter 5

Fact of The Case

a. A client promised to pay an additional amount to his lawyer if the lawyer wins the suit for him.
b. The suit was successful.

Question

Whether lawyer is entitled to additional amount for winning suit?

Decision Of Court

It was held that the promise was void for want of consideration. The lawyer was under a pre-existing contractual obligation to render the best of his services under the original contract.

4. Consideration Must Be Lawful

The agreement will be void if consideration furnished by any party is unlawful.

5. Consideration must be Real and not Illusory

Consideration received by party must be of some value. Consideration must not be illusionary. (i.e. existing only in name)

6. Natural love and affection

A written and registered agreement based on natural love and affection between the parties standing in near relation to each other is enforceable even without consideration.

Rajlukhy Devi Vs. Bhoothnath

1. Due to frequent quarrels between husband and wife. Fed up Husband agreed to pay some money to wife

2. Agreement is made in writing and registered

3. Such agreement is void as there was no love and affection.

Fact of The Case

a. There are frequent quarrels between husband and wife.
b. One-day husband got fed up with his wife and agreed to pay a sum of money as maintenance to his wife.
c. This agreement is made in writing and registered.

Question

Whether the agreement is valid?

Decision Of Court

It was held that such agreement is void as there was no love and affection.

7. Compensation for past voluntary services

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor is enforceable under Section 25(2).

The following are the essential factors for this condition

(i) The services should have been rendered voluntary.
(ii) The services must have been rendered for the promisor.
(iii) The promisor must be in existence at the time when services were rendered.
(iv) The promisor must have intended to compensate the promisee.

8. Promise to pay time bared debt
Where a promise in writing signed by the person making it or by his authorised agent is made to pay a debt barred by limitation it is valid without consideration [25 (3)]

9. Agency
According to Section 185 of the Indian Contract Act, no consideration is necessary to create an agency.

10. Completed gift
In case of completed gifts the rule no consideration no contract does not apply. Explanation (1) to Section 25 states nothing in this section shall affect the validity as between the donor and donee of any gift actually made. Thus gifts do not require any consideration.

11. Guarantee
In the contract of guarantee, consideration received by the principal debtor shall be sufficient consideration for the surety.

12. Bailment
No consideration is required for Gratuitous bailment.

Privity of Contract

Meaning
1. The general rule is that parties to contract can only sue.
2. That means the person who is not the party to the contract cannot sue.

Dunlop Pneumatic Tyre Co. Vs. Selfridge and Co.

1. D entered in contract to sell certain tyres to P
2. Contract provides that P shall not sell the tyres below the price
3. D instituted suit against S
4. Held that D was a third party to the contract therefore there could be no enforcement

Fact of The Case
a. D entered in contract to sell certain tyres to P.
b. The contract provides that P shall not sell the tyres below the price.
c. In addition to this contract provides that at time of resale P also impose the same condition on retailers.
The Indian Contract Act, 1872

Chapter 5

5.20

Exceptions of privity to contract
Chart for Understanding

<table>
<thead>
<tr>
<th>Exceptions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Creation of Trust</td>
</tr>
<tr>
<td>Marriage and family arrangements</td>
</tr>
<tr>
<td>Acknowledge ments</td>
</tr>
<tr>
<td>Assignment of Contract</td>
</tr>
</tbody>
</table>

**Creation of Trust**
Beneficiary is not a party to the agreement creating a trust. However the beneficiary is allowed to sue the trustee for enforcement of trustee’s duties.

**Marriage and family arrangements**
Where a marriage or family settlement is made, the person who is a beneficiary under such settlement is entitled to sue even though he may be a party to such settlement.

**Acknowledge ments**
The person who becomes an agent of a third party by acknowledge ment can be sued by such third party.

**Assignment of Contract**
An assignee can exercise all rights which could be exercised by the assignor previously, even if the assignee was not a party to the original contract.

Capacity of Parties

Effects of Minor’s Agreement

**1. Void Ab Initio**
1. A minor is incompetent to contract.
2. Therefore any agreement made by minor is void ab initio.
3. The agreement with minor does not have any legal effect.

**Mohori Bibi Vs. Dharamodas Ghose**

A minor entered into agreement for mortgage of property

1. He was paid a certain amount for mortgage the property

Mortgagee filed a suit for recovery of money

3. Held that money advanced to minor can’t be recovered as contract with minor is void

Question

Whether suit by D is maintainable?

**Decision Of Court**

It was held that Dunlop was a third party to the contract between the retailer and the distributor, therefore there could be no enforcement. Therefore suit by D is not maintainable.

d. P sold certain tyres to S. S resold the tyres at price below the listed price.

e. D instituted suit against S.

Make Your Own Notes

© CA Darshan D. Khare
Fact of The Case
a. A minor entered into agreement for mortgage of property.
b. He was paid a certain amount for mortgage the property.
c. Afterwards the mortgagee filed a suit against the minor for recovery of money paid to minor.

Question
Can mortgagee recover money?

Decision Of Court
It was held that Money advanced to minor cannot be recovered. As per Sec 10 and 11 of Indian contract Act the Minor Contract is absolutely void.

2. Agreement for Benefit of Minor

1. The agreement creating obligation for minor is void as per Mohori Bibi Vs. Dharamodas Ghose.
2. Thus the agreement for benefit of minor are valid as it does not create any legal obligation.
3. Therefore the agreement for benefit of minor can be enforced by minor.
4. If the other party to the obligation failed to perform its obligation the minor can claim restitution.

Khan Gul Vs. Lakha Singh

1. K gave Loan to L, on misunderstanding that he was major.
2. K filed a suit for recovery of money.
3. held that minor shall not be personally liable. His estate shall be used to recover Loan.

Fact of The Case
a. L, a minor fraudulently showed him as major.
b. K gave him Loan, on misunderstanding that he was major.
   Afterwards K filed a suit against L for recovery of Loan given to him.

Question
Can K recover money?

Decision Of Court
- The court may grant the relief to the other party who entered into the agreement with minor on the basis of a misrepresentation made by the minor.
- If the minor received some consideration under the agreement the court may grant restitution to the other party.
- However minor shall not be personally liable, means the restitution shall be made only to such extent as the estate of minor has been benefited.
- The power of the court to grant relief is discretionary in nature.
- The court shall not grant relief if the other party had the knowledge of the fact that it was entering into an agreement with a minor.
3. Rule of Estoppel

1. The rule of estoppel does not apply to agreement of minor, because it can amount to enforcing void agreement.
2. Thus rule of estoppel does not apply against minor.

4. No rectification by Minor

1. The agreement entered by minor cannot be ratified by him after attaining majority.
2. If minor wants to pay for the goods after attaining majority such agreement shall be void for want of consideration.

5. Liability of Guardian

1. The guardian shall not be liable for the act of the minor.
2. The contract made by guardian on behalf of minor shall be valid if:
   a. The contract is for benefit of minor.
   b. The guardian has the authority to enter into such agreement.

6. Liability of Minor for Necessities

The minor shall be liable for the necessities supplied to him or any other person dependant on minor.

**Conditions**

a. The liability is for only necessities of life depending on social status of minor.
b. The minor is not already in possession of such necessities.
c. The minor shall not be personally liable.

7. Position of Minor in Other Contracts

1. The minor cannot be guarantor.
2. Minor can be member if shares are fully paid up.
3. Minor can be apprentice provided he is of at least 14 years of age.
4. Minor cannot become a partner in a firm. However he can be admitted for benefits of partnership.

**Person of Unsound Mind**

Unsound Mind consist of

- **Lunatics**
  A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. He suffers from intermittent intervals of sanity and insanity. He can enter into contracts during the period when he is of sound mind.

- **Idiots**
  An idiot is a person who has completely lost his mental powers. He does not exhibit understanding of even ordinary matters. Idiocy is permanent whereas lunacy denotes periodical insanity with lucid intervals. An agreement f an idiot, like that of a minor, is void.

- **Drunken or intoxicated persons**
  A drunken or intoxicated person suffers from temporary incapacity to contract, i.e. at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment. The position of a drunken or intoxicated person is similar to that of a lunatic.
### Agreements entered into by persons of unsound mind are void

Persons of unsound mind are liable for necessities supplied to them or to anyone whom they are legally bound to support. But even in such cases, no personal liability attaches to them. It is only their estate which is liable.

### Burden of Proof

The burden of proof that the person is of unsound mind lies on the party who challenges validity of contract.

### Person Disqualified Under Law

<table>
<thead>
<tr>
<th>Disqualified Person</th>
<th>Alien Enemy</th>
<th>Convict</th>
<th>Foreign Diplomats</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Existing contract is suspended till war is over.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. New contract cannot be entered till war is over.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Above 2 can be executed with CG's approval</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disqualified Person</th>
<th>Alien Enemy</th>
<th>Convict</th>
<th>Foreign Diplomats</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Existing contract is suspended till conviction is over.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. New contract cannot be entered till conviction is over.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Above 2 can be executed with CG's approval</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Disqualified Person</th>
<th>Alien Enemy</th>
<th>Convict</th>
<th>Foreign Diplomats</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Right to sue others is available</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. With approval of CG.</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Free Consent

<table>
<thead>
<tr>
<th>Section 13</th>
<th>Section 14</th>
</tr>
</thead>
<tbody>
<tr>
<td>Two or more persons are said to have consented when they agree upon the same thing in the same sense (Consensus-ad-idem).</td>
<td></td>
</tr>
<tr>
<td>Consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake.</td>
<td></td>
</tr>
</tbody>
</table>

### Coercion (15)

<table>
<thead>
<tr>
<th>Coercion</th>
<th>Under Indian Penal Code</th>
<th>Unlawful detention of property</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Actually committing offence under IPC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Threatening to commit offence under IPC</td>
<td></td>
<td></td>
</tr>
<tr>
<td>With intention to causing person to enter into agreement</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1. Actually detaining property</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Threatening to detain the property</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

© CA Darshan D. Khare
Some Important Points
1. It is immaterial whether Indian penal code (IPC) is or is not in force in the place where the coercion is employed [Explanation to Section 15]
2. It is not required that coercion must proceed from the party to the contract. It may proceed from a third person also
3. It is not necessary that coercion be immediately directed against the party whom it is intended to induce to enter into a contract. It may be directed against any third person whatever.
4. Coercion must be done to induce the other party to enter into a contract

Threat to commit suicide
Calcutta High Court held that “One committing suicide places himself or herself beyond the reach of the law, and necessarily beyond the reach of any punishment too. But it does not follow that suicide is not forbidden by the Indian Penal Code, Section 306 of the IPC punishes abetment of suicide, Section 309 punishes an attempt to commit suicide. Thus, suicide as such is no crime, as indeed it cannot be, But its attempt is; its abetment too is. So it may very well be said that the Indian Penal Code does forbid suicide.”

Undue Influence (16)
Condition of Undue Influence
- Party is in dominant position
- Party uses its dominant position
- Dominant party obtains unfair advantage

Burden of Proof
- Unconscionable transaction
  1. The burden of proof is on dominant party.
  2. The dominant party has to prove that undue influence was not employed.
- Any other transaction
  1. The burden of proof is on the weaker party.
  2. The weaker party has to prove that undue influence was employed.

No Undue Influence
Every transaction where the terms are disadvantages to one party is not necessarily influenced by undue influence. If contract is made in the ordinary course of business there is no undue influence.

Distinction Between Coercion & Undue Influence
<table>
<thead>
<tr>
<th>Basis</th>
<th>Coercion</th>
<th>Undue Influence</th>
</tr>
</thead>
<tbody>
<tr>
<td>Governing Section</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Meaning</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Essentials of Fraud (17)

**Meaning**

FRAUD includes any of the following 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.

<table>
<thead>
<tr>
<th>Representation of fact which is not true.</th>
</tr>
</thead>
<tbody>
<tr>
<td>The active concealment of a fact by one having knowledge or belief of the fact.</td>
</tr>
<tr>
<td>A promise made without any intention of performing it.</td>
</tr>
<tr>
<td>Any other act fitted to deceive.</td>
</tr>
<tr>
<td>Any such or omission as to law specially declared to be fraudulent.</td>
</tr>
</tbody>
</table>
Silence as fraud

<table>
<thead>
<tr>
<th>General Rule</th>
<th>Mere silence which likely to affect the willingness of the party is not fraud.</th>
</tr>
</thead>
</table>
| Exceptions   | a. Where there is fiduciary relationship i.e. trust on other party and party is silent when it requires to speak about matters affecting contract.  
               b. When silence is equivalent to speech.  
               c. Partial disclosure of truth which deceives the other party is a fraud. |

Essentials of Misrepresentation (18)

- Only parties to the contract shall be involved.
- The party thinks that he makes representation
- But the representation is false
- Misrepresentation was made innocently and not to deceive other party
- Other party acted as per contract unknown of misrepresentation
- Contract is voidable at the option of the aggrieved party.
- The party, however, may also insist that the contract should be performed and that he should be put in the same position in which he would have been, if the representation made had been true.
- Contract not voidable
  1. But a person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation.
  2. Where a party to a contract perpetrates fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the latter.
- Restoration of Benefit
  1. As to the consequences of the recession of voidable contracts,
  2. The party rescinding voidable contract should, if he has receive any benefit there under from the other party to the contract,
  3. restore such benefit so far as may be applicable,
  4. to the person from whom, it was received.

Mistake (20 to 22)

- Mistake of law
  1. The contract is not voidable.
  2. Mistake as to foreign law is mistake of fact.
- Mistake of Face
  1. False identity of other party
  2. Entering into contract on inducement and without his fault
- Bilateral Mistake
  1. Both party at mistake
  2. If mistake is material
  3. Contract is void
  a. Mistake as to subject matter
  b. Mistake as to possibility of performance

Unilateral Mistake

1. Only 1 party at mistake
2. Contract is not voidable

Voidable as to

1. False identity of other party
2. Entering into contract on inducement and without his fault
### Difference Between Unilateral & Bilateral Mistake

<table>
<thead>
<tr>
<th>Basis</th>
<th>Unilateral Mistake</th>
<th>Bilateral Mistake</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Section</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Difference Between Void & Voidable Contract

<table>
<thead>
<tr>
<th>Basis</th>
<th>Void Contract</th>
<th>Voidable Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Meaning / Definition</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Status</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Rights</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Performance of Contract</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reason</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Effect</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Damages</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
### Legality of Object & Consideration

#### Unlawful Object

An agreement, the object or consideration of which is unlawful, is void. Agreement or consideration is unlawful in following situations:

- When it is forbidden by law
- If permitted then will defeat the provisions of any law
- Fraudulent
- Involves injury to the person or property of another
- Immoral
- Opposed to public policy

<table>
<thead>
<tr>
<th>Agreement</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agreements of trading with enemy</td>
<td>An agreement made with an alien enemy in time of war is illegal on the ground of public policy. This is based upon one of the two reasons: either that the further performance of the agreement could involve commercial intercourse with the enemy, or that the continued existence of agreement would confer upon the enemy an immediate or future benefit. Contracts which are entered into the intention of the parties can or cannot be carried out by postponing performance till the end of hostilities.</td>
</tr>
<tr>
<td>Agreement to commit a crime</td>
<td>Where the consideration in an agreement is to commit a crime, the agreement is opposed to public policy. The Court will not enforce such an agreement. Likewise an agreement to indemnify a person against consequence of his criminal act is opposed to public policy and hence unenforceable.</td>
</tr>
</tbody>
</table>
| Agreements which interfere with administration of justice | An agreement the object of which is to interfere with the administration of justice is unlawful, being opposed to public policy.  
1. Interference with the course of justice  
2. Stifling prosecution  
3. Maintenance and champerty. |
| Agreements in restraint of legal proceedings | (a) **Agreement restricting enforcement for rights**: An agreement which wholly or partially prohibits any party from enforcing his rights under or in respect of any contract is void to that extent.  
(b) **Agreements curtailing period of limitation**: Agreements which curtail the period of limitation prescribed by the Law of Limitation are void because their object is to defeat the provisions of law. |
| Trafficking in public offices and titles | Agreements for the sale or transfer of public officers and titles or for the procurement of a public recognition like Padma Vibhushan or Parm Veer Chakra for monetary consideration are unlawful, being opposed to public policy. |
| Agreements tending to | If a person enters into an agreement whereby he is bound to do |
**Chapter 5  The Indian Contract Act, 1872**

| create interest opposed to duty | something which is against his public or professional duty, the agreement is void on the ground of public policy. |
| Agreements in restricting personal liberty | Agreements which unduly restrict the personal freedom of the parties to it are void as being against public policy. |
| Agreements in restraint of marriage | Every agreement in restraint of the marriage of any person, other than a minor, is void (Section 26). This is because the law regards marriage and married status as the right of every individual. |
| Marriage brokerage agreements | An agreement by which a person, for a monetary consideration, promises in return to procure the marriage of another is void, being opposed to public policy. Similarly, an agreement to pay money to the parent or guardian or a minor in consideration of his/her consenting to give the minor in marriage is void, being opposed to public policy. |
| Agreements interfering with martial duties | Any agreement which interferes with the performance of martial duties is void, being opposed to public policy. |
| Agreements to defraud creditors or revenue authorities | An agreement the object of which is to defraud the creditors or the revenue authorities is not enforceable, being opposed to public policy. |
| Agreements in restraint of trade | An agreement which interferes with the liberty of a person to engage himself in any lawful trade, profession or vacation is called an “agreement in restraint of trade.” |
| Agreement the meaning of which is uncertain | An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid. |
| Wagering agreement | A promise to give money or money's worth upon the determination or ascertainment of an uncertain event in which the parties have no interest. |

### Maintenance & Champerty

“Maintenance” is an agreement to give assistance, financial or otherwise, to another to enable him to bring or defend legal proceeding when the person giving assistance has got no legal interest of his own in the subject-matter.

“Champerty” is an agreement whereby one party is to assist another to bring an action for recovering money or property, and is to share in the proceeds of the action. Under the English Law, both these agreements are void. If the object of a contract is just to assist the other party in making a reasonable claim arising out of a contract and them to have a fair share in the profit, the contract is valid.

### Partly Unlawful Agreements

If the agreement can be segregated
(a) The lawful part will be enforced.
(b) The unlawful part cannot be enforced.

If the agreement cannot be segregated the whole agreement shall be considered as void.

### Void Agreements- Agreement in Restraint of trade (27)

**Meaning**

The agreements in restraint of trade are void agreements.

An agreement which
(a) interferes with the liberty of a person
(b) to engage him in any unlawful trade, profession or vacation
(c) is called an “agreement in restraint of trade.”
Burden of Proof

1. Party supporting agreement must prove that, restraint is reasonably necessary for protection of his interest.
2. Party challenging agreement must prove that restraint is injurious to the public.

Exceptions

Sale of Goodwill
Agreement restraining seller of goodwill from carrying on same business is valid if:
- Seller carrying on similar business.
- the restriction apply within specified local limits.

Restriction on Existing partner
Agreement may provide that while continuance of business partner shall not carry on any other business

Restriction on Outgoing Partner
1. shall not carry on similar business.
2. restriction in specified local limit for specified time.

Restriction in Case of Sale of Goodwill of Firm
1. Any partner shall not carry on similar business.
2.restriction in specified local limit for specified time.

Agreement in Restraint of Legal Proceeding (28)

Meaning
Agreement restricting enforcement for rights
An agreement which wholly or partially prohibits any party from enforcing his rights under or in respect of any contract is void to that extent.

Agreements curtailing period of limitation
Agreements which curtail the period of limitation prescribed by the Law of Limitation are void because their object is to defeat the provisions of law.

Exceptions
The agreement referring future dispute or present dispute to arbitrator is not void.

Wagering Agreements (30)

Meaning
A promise to give money or money’s worth upon the determination or ascertainment of an uncertain event in which the parties have no interest.

Essentials
Promise to pay money or money’s worth
The wagering agreement must contain a promise to pay money or money’s worth.

Uncertain event
The promise must be conditional on an event happening or not happening. A wager generally contemplates a future event, but it may also relate to a past event provided the parties are not aware of its result or the time of its happening.
## Effect of Wagering Agreement

(i) Wagering agreements have been expressly declared to be void in India. In the State of Maharashtra and Gujarat they have been declared to be illegal.

(ii) Suit to recover money deposited. Money deposited with a person (called stakeholder) to be paid to the party winning upon a wager cannot be recovered by the winner. On the other hand, the loser can recover his deposit from the stakeholder. But were the stakeholder pays the money to the winner, the loser cannot recover it from him.

(iii) Collateral transactions. Since wagering agreements are void, transactions collateral to them are not affected. However, in the State of Maharashtra and Gujrat, the wagering agreements have been declared to be illegal.

## Contingent Contracts (31)

**Definition**

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 e.g. contract of indemnity or of insurance.

E.g.: A contracts to pay B Rs. 10,000 if B’s house is burnt. This is a contingent contract.
The Indian Contract Act, 1872

Chapter 5

Enforcement of Contingent Contracts on Happening of Event (32)
Contingent contracts to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Illustrations
(a) A makes a contract with B to buy B’s horse if A survives C. This contract cannot be enforced by law unless and until C dies in A’s lifetime.
(b) A makes a contract with B to sell a horse to B at a specified price, if C, to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.
(c) A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

Enforcement of Contingent Contracts on Non Happening of Event (Sec 33)
Contingent contracts to do or not to do anything if an uncertain future event does not happen can be enforced when the happening of that event becomes impossible, and not before.

Illustrations
A agrees to pay B a sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

Contingent contract Become Impossible due to Future Conduct of Person (34)
If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies.

Illustrations
A agrees to pay B a sum of money if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B.

Contingent Contracts Depending on Happening of Specific Event in Specific Time
Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contingent on specified event not happening within fixed time.
Contingent contracts to do or not to do anything if a specified uncertain event does not happen within a fixed time may be enforced by law when the time fixed has expired and such event has not happened, or, before the time fixed has expired, if it becomes certain that such event will not happen.

Illustrations
(a) A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.
(b) A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

Agreement Contingent on Impossible Event is Void (36)
Contingent agreements to do or not to do anything if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.
Chapter 5  The Indian Contract Act, 1872

Illustrations

(a) A agrees to pay B 1,000 Rs if two straight lines should enclose a space. The agreement is void.
(b) A agrees to pay B 1,000 Rs if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void.

Quasi Contracts

 Meaning

In a contract, a promisor voluntarily undertakes an obligation in favour of the promisee. When a similar obligation is imposed by law upon a person for the benefit of another even in the absence of a contract. Such contracts are the quasi-contracts. These are based upon principles of equity, justice and good Conscience.

 Features

<table>
<thead>
<tr>
<th>Features</th>
</tr>
</thead>
<tbody>
<tr>
<td>Such a right is always a right to money generally to a liquidated sum of money.</td>
</tr>
<tr>
<td>It does not arise from any agreement of the parties concerned, but is imposed by the law</td>
</tr>
<tr>
<td>It is a right against a particular person so looks like a contractual right</td>
</tr>
</tbody>
</table>

Types of Quasi Contract

<table>
<thead>
<tr>
<th>Types of Quasi Contract</th>
</tr>
</thead>
<tbody>
<tr>
<td>Claim for necessaries supplied to persons incapable of contracting (68)</td>
</tr>
<tr>
<td>The supplier is entitled to claim their price from the property of such a person. Same is the case if money has been advanced for the purchase of necessaries. e.g. minor or a person of unsound mind</td>
</tr>
<tr>
<td>Right to recover money paid for another person (69)</td>
</tr>
<tr>
<td>A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.</td>
</tr>
<tr>
<td>Obligation of a person enjoying benefits of non-gratuitous act (70)</td>
</tr>
<tr>
<td>Where, a person does some act or delivers something lawfully to another person with the intention of receiving payments for the same, in such a case, the other person is bound to make payment if he accepts such services or goods or enjoys their benefit</td>
</tr>
<tr>
<td>Responsibility of a finder of goods (71)</td>
</tr>
<tr>
<td>&quot;A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee.&quot; Therefore, he is required</td>
</tr>
<tr>
<td>a. To take proper care of the thing found as his own goods</td>
</tr>
<tr>
<td>b. Not to appropriate it to his own use,</td>
</tr>
<tr>
<td>c. To restore it to the owner when the owner is traced.</td>
</tr>
<tr>
<td>Right of finder</td>
</tr>
<tr>
<td>a. Finder is entitled to retain it against whole world.</td>
</tr>
<tr>
<td>b. Finder has lien for express incurred in preserving goods &amp; finding true owner.</td>
</tr>
<tr>
<td>c. However he cannot file suit for recovery of this money.</td>
</tr>
<tr>
<td>d. If he can claim recovered. If it was offered.</td>
</tr>
<tr>
<td>e. If true owners refuses to pay lawful charge he May Sale.</td>
</tr>
<tr>
<td>f. When goods are of perishable nature.</td>
</tr>
<tr>
<td>g. When lawful charge amount to two third of its values or more.</td>
</tr>
</tbody>
</table>
Performance of Contract

### Meaning

(a) Parties to the 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. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract. (Section 37).

(b) So it may be concluded that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise.

### By whom contract must be performed?

- **Promisor himself**
  - Promise has to be performed by the promisor where the contracts are entered into for performance of personal skills, or diligence or personal confidence, it becomes absolutely necessary that the promisor performs it himself.

- **Agent**
  - Where personal consideration is not the foundation of a contract, the promisor or his representative can employ a competent person to perform it.

- **Representatives:**
  - Generally upon the death of promisor, the legal representatives of the deceased are bound by the promise unless it is a promise for performance involving personal skill or ability of the promisor. However, the liability of the legal representative is limited to the value of property inherited by him from the promisor.

- **Third Person**
  - Where a promisee accepts performance from a third party he cannot afterwards enforce it against the promisor. Such a performance, where accepted by the promisor has the effect of discharging the promisor though he has neither authorized nor ratified the act of the third party.

- **Joint promisors**
  - Where 2 or more persons jointly promise, promise must be performed jointly unless a contrary intention appears from contract.

### Time and place for performance of the promise (46 to 50)

The law on the subject is contained in Sections 46 to 50 provisions whereof are summarised below:

1. If no time is specified in a contract for the performance of the promise, the promise must be performed within a reasonable time. (46)
2. If a promise is to be performed on a specified date but the hour is not mentioned the promisor may perform it at any time during the usual hours of business, on such day. (47)
3. When no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promise to fix a reasonable place for the performance of the promise. (49)
4. Where promisor has not undertaken to perform the promise without an application by the promise, and the promise is to be performed on a certain day it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business. (48)

**Performance of reciprocal promises (51 to 53)**

1. General observations: where contract is consist of two promises which are consideration for each other than promises are called reciprocal promises.
2. Simultaneous performance of reciprocal promises or one after another. (51)
3. Performance of reciprocal promise where the order of performance is expressly fixed (52)
4. Performance of reciprocal promise when the order of performance is fixed by implication (implied order).
5. Effect of one party preventing another from performing promise (53): Then contract becomes voidable at the option of the party prevented.

**Reciprocal promise to do legal and illegal things (57)**

When persons reciprocally promise,
- first to do certain things which are legal and
- secondly, under specified circumstances, to do certain other things which are illegal,
the first set of promises is a contract, but the second is a void agreement.

**Distinction between Secession and Assignment**

<table>
<thead>
<tr>
<th>Secession</th>
<th>Assignment</th>
</tr>
</thead>
<tbody>
<tr>
<td>When the benefits of a contract are given by succession then both burden and benefits attaching to the contract are passed to the successor.</td>
<td>Unlike succession, the assignor can assign only the assets to the assignee and not the liabilities. Because when a liability is assigned, a third party gets involved in it. The debtor cannot through assignment relieve himself of his liability to creditor.</td>
</tr>
</tbody>
</table>

**Effect of refusal to accept offer of performance (38)**

When offer is not accepted promisor is not responsible to fulfil his promise. Such offer must fulfil certain conditions which are as follows, namely;

- It must be unconditional
- The offer is made at a proper time and place under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing to do what he is bound to do, then and there.
- If the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing that the promisor is bound by his promise to deliver.

**Liability of Joint Promisor (42 to 44)**

If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so. After the death of the last survivor the legal representatives of all jointly must fulfill the promise.
If joint promisors don’t discharge their obligation as per section 42 then provisions will be as follows as per **Section 43**:

| **Promisee may compel any one or more of such joint promisors to perform the whole of the promise.** |
| **When one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.** |
| **If any of the joint promisors makes a default in making his contribution the remaining joint promisors must bear the loss arising from such a default in equal shares.** |

**This rule does not apply** in case of promise made by Principal debtor and surety to promisee. If surety pays anything he can recover from the debtor but if principal debtor pays anything to creditor he cannot recover this from surety as he is just discharging his own liability.

If original debtor is a single person then promisee will have to file suit against all the legal heirs on the death of debtor not to any of them.

**Section 44:**

Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors. Also release of one joint holder does not release the other holders.

**Appropriation of Payments (59 to 61)**

(i) **Application of Payment where debt to be discharged is indicated [59]:**

Then payment must be applied accordingly. The Latin maxim is quick quid soivitur, sovitur secundum modum solventis. The meaning of this maxim is that whatever is paid, is paid according to the intention or manner of the party paying.

(ii) **Application of payment where debt to be discharged is not indicated [60]:**

At the discretion of creditor for any lawful debt whether its recovery is or is not discovered by the law in force for the time being as to the limitation of suits.

(iii) **Application of payment where neither party appropriates [61]:**

Application of money to discharge of the debts in order of time, whether they are or are not barred by the law in force. If the debts are of equal standing the payment shall be applied in discharge of each proportionately."
Discharge of Contract

- By Laps of Time
- By Operation of Law
- By Breach of Contract
- By imposition of Performance
- By Performance
- By remission; By Accord or Satisfaction
- By Neglect or refusal
- By Mutual Agreement

Discharge by Impossibility of Performance (56 & 73)

Agreements become void when it becomes impossible to perform them due to a variety of reasons. This is known as “impossibility of performance” and dealt with by section 56 of the Act.

<table>
<thead>
<tr>
<th>Impossibility existing at the time of contract</th>
<th>Void</th>
</tr>
</thead>
<tbody>
<tr>
<td>If the impossibility is known to the parties</td>
<td>Void</td>
</tr>
<tr>
<td>If the impossibility is unknown to the parties</td>
<td>promissee can claim for damages on account of non-performance.</td>
</tr>
<tr>
<td>If impossibility known to the promisor only or he should have known with his due diligence</td>
<td></td>
</tr>
</tbody>
</table>

Supervening impossibility

When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties the contract becomes void. Supervening impossibility can arise due to a variety of circumstances as stated below.

Reasons of Supervening impossibility

- Accidental destruction of the subject matter of the contract.
- Nonexistence or non-occurrence of a particular state of
- Incapacity to perform a contract of personal services.
- If there is any Change in Law
- If there is any Outbreak of war
Outbreak of war can consist of

(i) By emergency legislation controlling prices or relaxing restrictions of trade.
(ii) By prohibiting or restraining transaction with alien enemy.

<table>
<thead>
<tr>
<th>What is not Supervening impossibility</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases</td>
</tr>
<tr>
<td>Commercial Impossibility</td>
</tr>
<tr>
<td>Default by 3rd party</td>
</tr>
<tr>
<td>Strikes, Riots &amp; Civil Disturbances</td>
</tr>
<tr>
<td>Self-Induced Impossibility</td>
</tr>
<tr>
<td>Partial Failure of Objects or Partial Impossibility</td>
</tr>
</tbody>
</table>

Discharge by Mutual Agreement (62 & 63)

- **Novation (62)**
  - a. Substitute new contract by old
  - b. Liability under contract can be transferred to 3rd party with the consent

- **Alteration (62)**
  - a. It should be done mutually
  - b. If such alteration is made by single party contract become void

- **Remission (63)**
  - a. Acceptance of lesser amount or lesser degree of performance for full discharge.
  - b. Restriction in specified local limit for specified time.

- **Rescission (62)**
  - a. Both parties agree to rescind
  - b. One party fails to perform his obligation other party may rescind.

- **Waiver**
  - Means dispute with performance; for this
    1. Neither agreement.
    2. Nor consideration is necessary.
Discharge by Operation of Law

Effect of failure to perform at a time fixed in a contract where time is essential
1. Contract is voidable at the option of promisee.
2. Contract cannot be avoided when time is not essential.

Discharge by Operation of Law

<table>
<thead>
<tr>
<th>Event</th>
</tr>
</thead>
<tbody>
<tr>
<td>Death</td>
</tr>
<tr>
<td>Insolvency</td>
</tr>
<tr>
<td>Unauthorized Alteration</td>
</tr>
<tr>
<td>Merger of Rights</td>
</tr>
</tbody>
</table>

Discharge by Breach of Contract

<table>
<thead>
<tr>
<th>Meaning of Breach</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Consequence of Breach</th>
</tr>
</thead>
</table>

Kinds of Breach (39)

<table>
<thead>
<tr>
<th>Actual Breach</th>
<th>Anticipatory Breach</th>
</tr>
</thead>
<tbody>
<tr>
<td>• One party refuses or fails to do his part of the promise</td>
<td></td>
</tr>
<tr>
<td>• It may take place (expressly or impliedly) –</td>
<td>• It occurs when the party declares his intention of not performing the contract before the performance is due</td>
</tr>
<tr>
<td>(a) On due date of performance</td>
<td>(a) Refusing to perform his promise under the contract, or</td>
</tr>
<tr>
<td>(b) During the course of performance</td>
<td>(b) By his act disabling himself from performing the promise before due date of performance</td>
</tr>
</tbody>
</table>

Remedies for Breach of Contract

Rescission (39)

a. When a contract is broken by one party,
b. the other party may treat the contract as rescinded.
c. In such a case aggrieved party is absolved of all his obligations under the contract and
d. is entitled to compensation for any damages that he might have suffered.

Suit for Damages

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.
### Liability to pay vindictive or exemplary damages

These are awarded for following:

<table>
<thead>
<tr>
<th>For breach of promise to marry; and</th>
</tr>
</thead>
<tbody>
<tr>
<td>For wrongful dishonour by a banker of his customer's cheque. (A trader is assumed to have bigger losses than a non-trader)</td>
</tr>
</tbody>
</table>

### Liability to pay nominal damages

Where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract.

### Damages for deterioration caused by delay

It can be recovered from carrier even without notice. Deterioration not only means physical damages but also mean loss of special opportunity for sale.

### Liquidated damages and penalty

Sometimes parties to a contract stipulate at the time of its formation that on the breach of the contract by either of them, a certain specified sum will be payable as damages. Such a sum may amount to either “liquidated damages” or a “penalty”.

**“Liquidated damages”** represent a sum, fixed or ascertained by the parties in the contract, which is a fair and genuine pre-estimate of the payable loss that might ensue as a result of the breach, if it takes place.

A “penalty” is a sum named in the contract at the time of its formation, which is disproportionate to the damage likely to accrue as a result of the breach. It is fixed up with a view to securing the performance of the contract.

The rules for determining whether a stipulation is by way of a penalty or by way of liquidated damages are as follows:

1. The parties to a contract may use the words “Penalty” or “liquidated damages” interchangeably. It must ascertain whether a sum is in truth a penalty or liquidated damages.
2. The essence of a penalty is the payment of money stipulated is to compel the performance of the contract by providing something by way of punishment if the contract is not performed. The essence of liquidated damages is genuine per-estimate of damage, which seems likely to be caused should the breach occur.
3. The sum stipulated is a penalty if-
   - (a) It is extravagant or unconscionable (unreasonable) in amount compared with the greatest loss which could conceivably be proved to have followed from the breach;
   - (b) The breach consists of not paying a sum of money by a certain time and the sum fixed is greater than the sum to be paid.
4. When a single lump-sum is made payable on the occurrence of one or more of several events, some of which may occasion serious and other trifling damage, there is a presumption that the sum is a penalty.

### Payment of interest

The largest number of cases decided under Section 74 relate to stipulations in a contract providing for payment of interest. The following rules are observed with regard to payment of interest:

1. Payment of interest in case of default.
2. Payment of interest at higher rate-
5.41 Payment of compound interest on default

<table>
<thead>
<tr>
<th>At the same rate as simple interest</th>
<th>At the rate higher than simple interest</th>
</tr>
</thead>
<tbody>
<tr>
<td>A stipulation for payment of compound interest on failure to pay simple interest at the same rate as was payable upon the principal is not a penalty.</td>
<td>A stipulation in a bond for the payment of compound interest at a rate higher than that of simple interest is a penalty and would be relieved against.</td>
</tr>
</tbody>
</table>

Suit for specific performance

Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct in party in breach, to carry out his promise according to the terms of the contract.

Suit upon Quantum Meruit

The phrase ‘quantum meruit’ literally means “as much as earned” or “according to the quantity of work done”. A person who has begun a civil contract work and has to later stop the work because the other party has made the performance impossible, is entitled to receive compensation on the principle of ‘Quantum Meruit’.

Following are instances where ‘quantum meruit’ may arise

Where the work has been done and accepted under a contract which is subsequently discovered to be void. In such a case, the person who has performed his part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.

Where a person does some act or delivers something to another person with the intention of receiving payment, the other person is bound to make payment if he accepts such services or goods or enjoys the benefits.

Where the contract is divisible and where a party performs a part of the contract and refuses to perform the remaining part, the party in default may sue the other party who enjoyed the benefit of the part performance.

Suit for injunction

Where a party to contract giving negative effect to terms of contract, the court may by issuing an “injunction order” restrain him from doing what he promised not to do.