

# INDIAN CONTRACT ACT, 1872

[12-15marks] M T W T F S S

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Date:

YOU

↓  
applied on business contract

- (1) The Indian Contract Act applies to trade, commerce and industry. The contract law is governed by the Indian Contract Act, 1872 and it came into force w.e.f. 1/9/1872.
- (2) It applies to whole of India.
- (3) The Indian Contract Act, 1872, codifies legal principles that governs the contracts. It basically defines circumstances in which promises are made by parties to a contract who shall be legally binding to fulfill them.
- (4) According to Section 10 of the Indian Contract Act, 1872 following are the essentials of a valid contract :-
  - a) There must be an agreement : In order to constitute a valid contract firstly there must be an agreement. There must be at least two parties to constitute an agreement.
    - (i) The maker who make an offer; and another
    - (ii) who signifies the acceptance.The terms of agreement must be definite (i.e, offer must be definite), it must be absolute and unconditional.
  - b) Legal Relationship : The parties must have an intention to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationships, and hence they are not called as contract. (to start meeting)
  - c) Lawful Consideration : Every agreement must be supported by a lawful consideration. 'Consideration' means something in return which should be real and lawful.
  - d) There must be Capable Parties : Those parties who enter into an agreement must be capable and not incompetent. A person is incompetent to enter into a valid contract if he is not 18 years of age (minor), if he is of an unsound mind, or he is disqualified by law.



e] The Agreement must have a lawful purpose: The object of the agreement must be lawful. An agreement cannot have an unlawful or illegal purpose.

f] There must be a free consent: The parties to the contract must give free consent which is genuine in nature. Consent which is obtained on account of coercion, undue-influence, fraud, mis-representation cannot amount to a free consent.

g] An agreement must have the terms capable of performance and certain: If the agreement is not capable of being performed then it is void or illegal in law.

h] Legal formalities: The nature of agreement should be such that it requires compliance (to follow) certain formalities such as registration, etc. It must be noted that the legal effects of a contract remains the same whether it is oral or in writing.

→ **ESSENTIALS OF A VAUD CONTRACT** :-

(1) A contract is valid only when there is a presence of lawful consideration. Consideration may be,

- (a) past
- (b) present
- (c) future

- An agreement made without consideration is void (invalid).  
- A contract is enforceable only when there is a consideration.



→ without agreement a contract cannot be force.

→ contract = agreement + enforceability → consideration

promisor promisee

legal relationship

all agreement cannot constitute contract, but all contracts are agreement.

(2)

<u>Agreement</u> Section 2(e)	<u>Contract</u> Section 2(h)
Every promise and every set of promises forming consideration for each other is an agreement	An agreement enforceable by law is a contract.

PROPOSAL (Section 2(a)):-  
 when one person signifies to another his willingness to do <sup>(not to do)</sup> or abstain from doing anything, with a view of obtaining the <sup>(approval)</sup> assent of that other, to such act/abstinence, he is said to have made a proposal.

agreement must have

↓  
agreements of social and domestic nature do not constitute a legal relationship.  
 So they are not contracts.

offer by

→ offer must be communicated

offerer.

[Carlil v/s carbolic smoke Balls Co]

Acceptance by

→ Offeree must have the knowledge of offer

offeree.

[Jaiman Shukla v/s Gauri Dutt]

Offer must

→ Offer must not be a burden

be definite on offeree [Feith house v/s Bindley]

It must be

unconditional.

↓  
 Husband promised his wife to buy her a 'necklace' on the occasion of Birthday → is not a contract.

↓  
 "A" promises "B" to build a house in exchange of money → is a contract ∴ there is a creation of legal-relationship.



→ silence is not an offer.

## CASE-LAWS :-

1] Offer must be communicated :- ('Carlil v/s Carbolic Smoke Ball Co')

A pharmaceutical co. advertised that it would give Rewards of \$100 to any person who contracted influenza, <sup>for a certain period according to the directions of company.</sup> Mrs. Carlil brought those smoke balls and used them as per directions of the company but contracted influenza. Decision of court: Mrs. Carlil was entitled to reward of \$100 as she had performed the condition for acceptance. (offerree had signified acceptance). Also, offer was communicated.

2] Offerree must have the knowledge of offer :- ('Lalman Shukla v/s Gauri Dutt')

'L' was 'G' servant who went to search the missing boy. Meanwhile 'G' issued handbills offering reward of ₹501 to anyone who would trace the missing boy. 'L' found the boy and brought him home. Decision of court: 'L' cannot claim reward. He was not having knowledge of offer. Also, as he was servant of 'G' it was part of his duty. So, he was not entitled for reward.

3] Offer must not be a burden on offerree :- ('Felthouse v/s Bindley')

'A' wrote to 'B' I will sell my horse for ₹500. If I didn't receive a reply by next Sunday, I will assume that you have accepted the same. Decision of court: 'A' cannot enforce the contract as offer must not be burden on offerree to communicate his decision. Any term of non-compliance does not amount to acceptance.



DISTINGUISH BETWEEN CROSS OFFER V/S COUNTER OFFER V/S OPEN OFFER V/S INVITATION TO MAKE AN OFFER:

- Cross Offer means when two persons make identical offer to each other without having the knowledge of each other offer, then it is known as 'cross offer'. Cross offer does not constitute a contract until acceptance is given for any of them.
- Counter offer is when an offer is accepted on terms and conditions different than those set out in the original offer then it amounts to counter offer.
- Open offer means is also known as 'continuing offer'. It is made to public and it is similar to case of "Carlill v/s Carbolic Smoke Ball co."
- Invitation to offer is a statement made by a person with a view to elicit (to find out) the response and negotiate a deal without expressing final willingness to contract. An invitation to offer can become an offer only when the respondents responds to the invitation.



## CONSIDERATION AND CAPACITY TO CONTRACT :-

(1) Consideration is the most essential element of a valid contract.

**NO CONSIDERATION = NO CONTRACT**

(2) eg:- Agreements on account of Natural love and affection; charity; gifts; promise to pay time-barred debt; Bailment; Agreement to pay for (compensate) past voluntary service. [As Per Section 25 of Indian contract Act, 1872 - these are exceptions to the general - Rule of No consideration = No contract]

CASE LAW: (for landmark not related to this)

**BALFOUR v/s BALFOUR** :- This is a landmark case of Domestic - agreement. The husband (Mr. Balfour) was working in ceylone. During the holidays, he and his wife (Mrs. Balfour) went to England to enjoy the leave. When Mr. Balfour was to return to ceylone, his wife was advised to remain in England due to ill-health. Mr. Balfour agreed to send a sum of \$930/month for probable expense of maintenance. For sometimes he sent the sum, but afterwards differences arose between them which resulted into their separation and allowance fell into arrears. Decision of court :- Mrs. Balfour's suit for recovery was dismissed on the grounds that parties did not intend to create legal relationship. It was a domestic agreement.

(3) Some more exceptions include :- → Guarantee contracts, Remission contracts (person agrees to receive less than what is due to him), contract of agency.

CASE LAW:

**RAJLU KHY DEVI v/s BHOOTNATH** :- There were frequent quarrels between husband and wife. One day husband got fed up with his wife and agreed to pay a sum of money as Maintenance to his wife. The agreement was registered and in writing. Decision of court :- Such agreement was **void - agreement** as there was no love and affection.

agreement not enforce-  
able in law.



CHINNAVA VS RAMMAYA :- Old lady made contract with 'R' (her daughter) that whole property shall be gifted to 'R', if 'R' pays annuity to 'C' [sister of old lady]. 'R' made contract with 'C' agreeing to pay her annuities. On death of old lady 'R' refused to pay annuity to 'C' that nothing was received from 'C' as consideration for annuity and agreement between 'C' and 'R' is void. Decision of court :- It was held that consideration need not necessarily move from promisee. It may move from any other person (third party). Hence, contention of 'R' is not valid.



**CAPACITY TO CONTRACT / PARTIES :-**

- (1) Parties to a contract must be capable of performance.
- (2) Parties entering a contract must be capable of entering into a contract.
- (3) Incompetent Parties :-
  - Minor = not above 18 years of age
  - Person of unsound mind.
  - Person dis-qualified by law.

~~IMP~~  
(1) Minor = not above 18 years of age.

**CASE LAW :-**

**MOHARI BIBI v/s DHARAMODAS GHOSE** :- A Minor entered into agreement for mortgage of Property. He was paid certain amount for mortgage of property. Afterwards, the mortgagee filed a suit against Minor for recovery of money paid to minor. Decision of Court :- As Per Section 10 and Section 11 of Indian Contract Act, 1872; Minor contract is absolutely void. Therefore, Mortgagee cannot recover money advanced to Minor.

- (a) Minor is incompetent to enter into valid contracts.
- (b) Minor agreements are "void-ab-initio".
- (c) Agreements with minor does not have any legal-effect.



approval

→ **FREE CONSENT :-**

**FRAUD :-**

- (1) Mere silence as to material-facts regarding the contract does not amount to fraud, since the contracting party is under no obligation to give full-disclosure to offer party due to the rule of "**Caveat - Emptor**" — **(Buyer Be Aware)**
- (2) However, he must refrain from active-concealment of facts relating to contract.
- (3) According to **section 17**, **fraud** includes the intent to deceive another party and includes:
  - Active concealment of facts. (**sachai ko chuppana**)
  - Suggesting that the fact is true but, the fact is its not true and the suggesting person knows about it.
  - Promise made without any intention to perform it.
  - Such other acts (omission) to deceive.
- (4) The party who has been deceived must-suffer a loss.
- (5) The aggrieved party can sue for damages.

**EXTRA POINTS :-**

**FRAUD :- where there is duty to speak.**

- Contract to create - **fiduciary** relation: **Trustee ka kaam Karne wala.**
  - eg: Father and son, Guardian and ward.
  - Contract of marriage
  - Contract of family-settlements.
  - Contract of guarantee.
- } where full-disclosure of material facts - is - required
- where contract is of utmost-good-faith [**Ubbermae-fidei**].
  - eg: contract of Insurance / marriage or immovable property.



COERCION :

- (1) Forcibly compelling a person to enter into contract by adopting unfair - means.
- (2) According to section 15(a), coercion is

Committing or threatening to commit any act, forbidden by India Penal - Code (IPC).  
eg:- suicide - Threat to commit suicide is forbidden by IPC.

Unlawful detaining or threatening to detain any property to prejudice any person with any intention of causing any person to enter into a contract.

Kisi ke property ko japt karna

OR  
nuksan pahochana

- (3) Threats not amounting to coercion:
- Threat to sue - unless suit is on false - charge.
  - Threat to strike.
  - Detaining property under mortgage.
- (4) Contract created by coercion is voidable at the option of aggrieved party and compensation can be claimed from defaulting party.

It is enforceable only at the option of aggrieved party.

UNDUE INFLUENCE :

existing

- (1) Section 16(1) : where the relation existing between the parties are such that one of the parties is in the position to dominate the will of the other and uses such dominant position to obtain an unfair advantage over and over the other.
- (2) Burden of Proof is on aggrieved party, that the dominant party must have obtained unfair - advantage on the weaker - party.



void contract  
starting se  
invalid

voidable contract  
coercion ka  
2th point

(3) Presumptions to Dominance of will:

- a] Master and servant - control.
- b] Contract made with a person whose mental-capacity is temporarily / permanently affected by reasons of -
  - age
  - illness
  - Mental / Bodily distress.
- c] Religious advisor and disciple. → their followers
- d] Income Tax-office and assessee. → tax payer
- e] Lawyer and client.
- f] Doctor and patient.

(4) No presumption in case of Husband and wife, etc.

MISREPRESENTATION:

(1)	FRAUD	MIS-REPRESENTATION
	<u>Intention</u>	
	To deceive other party.	No such intention.
	<u>Knowledge of Truth</u>	
	Person making suggestion believes it is untrue.	Person making suggestion believes it is true, but it is not.
	<u>Damage-claim</u>	
	Can be taken by injured party.	cannot be taken.

(2) Contracts of Mis-representation are voidable at the option of aggrieved party.

(3) Section-18 deals with Mis-representation.



→ **CONTINGENT CONTRACT :-**

(1) According to section 31 of Indian Contract Act, 1872 a contingent contract is to do or not to do something if some event, collateral to such contract does or does not happen. (assurance)  
ex: - Insurance contract which are contracts of indemnity and guarantee contract are examples of contingent contract.

(2) **RULES REGARDING CONTINGENT CONTRACT:**

a) (Section 32) contingent contracts are dependent only on happening of future uncertain events. If the event becomes impossible or does not happen then such contract cannot be enforced and they become void.

Ex: Mr. A agrees to pay Mr. B a sum of money if the ship returns. The contract can be enforced only when the ship returns. If the ship sinks in water the contract becomes void.

b) (Section 33) contingent contracts are dependent on non happening of uncertain future events. Such contract cannot be enforced by law until and unless the happening of that event becomes impossible.

Ex: 'A' agrees to pay 'B' sum of money if certain ship does return. The ship sinks, The contract can be enforced when the ship sinks and a ship returns then the contract becomes void.

c) (Section 34) contracts which are contingent are dependent on the non happening or future conduct of third person. This is a situation where the contingency is the conduct of 3rd person and it depends on the way how 3rd person behaves.



EX: 'A' sell goods to 'B' and 'B' promises to pay the price after 'C' has fixed it. If 'C' refuses to fix the price or he dies before fixing the price then the agreement becomes void.

d) [Section 35(1)] contracts are dependent on the happening of event within a time (fixed time). After the expiration of fixed time such event has not happened or before the time fixed such event might become impossible.

EX: 'A' promises to pay 'B' a sum of money if the ship returns within a year. The contract maybe enforced if the ship returns within a year and it may become void if the ship is burnt within a year since the event becomes impossible.

[Section 35(2)] Contingent contract are dependent on the non-happening of an event within fixed time. Contingent contract are dependent on non-happening of an event within fixed time maybe enforced by law when the time fixed has expired and such event has not happened.

EX: - 'A' promises to pay 'B' a sum of money if certain ship does not return within a year. The contract maybe enforced if the ship does not return within the year or is burned within the year.

e) (Section 36) contracts dependent on impossible events. 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 parties to the agreement at the time when it is made.



→ DISTINGUISH BETWEEN WAGERING AGREEMENT v/s CONTINGENT CONTRACTS

<u>WAGERING AGREEMENT</u>	<u>CONTINGENT CONTRACT</u>
(1) A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.	A contingent contract is a contract to do or not to do something if some event or collateral to such contract does or does not happen.
(2) Wagering agreement is void.	Contingent contract are valid.
(3) A wagering agreement is essentially of a contingent nature.	Contingent contract may not be of a wagering nature.
(4) The future event is the only deciding factor.	The future event is only a collateral determining factor.
(5) A wagering agreement always consist of reciprocal promises.	A contingent contract may or may not contain reciprocal promises.



SPECIAL CONTRACTS :-

(happening or non happening)

CONTINGENT CONTRACTS :-

Imp

(1) Contingent contracts are valid - contracts.

a] Happening of an Event -

Valid : when event happens.

Void : when event becomes impossible.

b] Non-Happening of an Event -

Valid : When event becomes impossible.

Void : Event happens (does not becomes impossible)

c] Happening within fixed time -

Valid : when event happen within fixed time.

Void : when event does not happens within fixed time.

d] Non-happening with fixed time -

Valid : Does not happen within fixed time / becomes impossible.

Void : Event happens within fixed time.

NOTE ON MAINTENANCE V/S CHAMPERTY :-

(1) MAINTENANCE : Is an agreement to give assistance, financial or otherwise, to another to enable him to bring / defend legal proceedings when the person giving assistance has got no legal interest of his own in the subject matter.

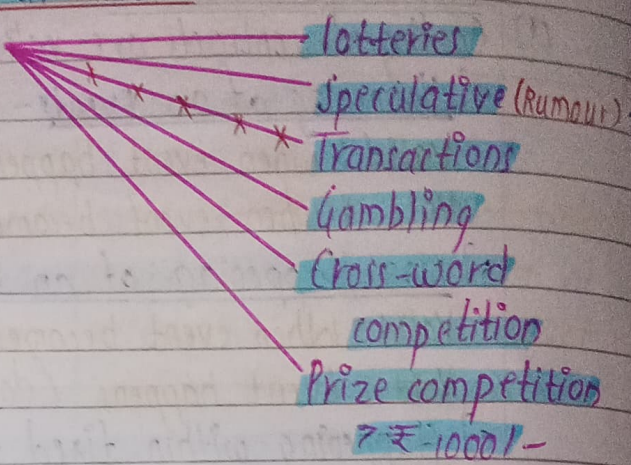
(2) CHAMPERTY : An agreement whereby one party is to assist another to bring an action for money or property and is to share in the proceeds of action. If the object of the contract is just to assist other party in making a reasonable claim and have fair-share the contract is valid.



IMP → WAGERING CONTRACT :-

- (1) Wagering agreements are void-ab-initio.
- (2) Kinds of wagering agreements

HWAITING!!!  
 SAKSHI  
 LIFE GOES ON...



- (3) In Maharashtra and Gujarat : wagering agreements are declared as illegal. Consequently, transactions which are collateral to wagering agreements in maharashtra and gujarat are void.
- (4) Transactions resembling with wagering agreement but are not void.
  - (a) Contract of insurance/indemnity.
  - (b) chit-fund.
  - (c) Game of skill and athletic-competition.
  - (d) Share market transaction (commercial-transaction).
  - (e) Horse Race ≥ ₹ 500.

→ PERFORMANCE OF CONTRACT :-

- (1) Performance of contract means fulfillment of obligations by the parties.
- (2) Parties who make contract must fulfill their obligations according to the terms laid-down in the contract.
- (3) According to section-37 - Parties to a contract must either perform
  - (a) offer to perform their respective promises, unless the performance is dispensed with or excused under the provision of this Act <sup>not allowed</sup>
  - (b) any other law.



(4) Time and place of performance:

- Parties are free to determine (+) if no time is specified then contract can be → performed within reasonable time.
- During usual Business hours (9am - 6pm) (+) place must be fixed. If no place is fixed then promisor can ask promisee to fix a reasonable place.

(5) Who must perform?

- i) In contracts of Personal-Nature the promisor himself. (contracts of personal nature come to end on the death of Promisor. eg: Mr. A engages a singer to sing a song on his Birthday. The singer dies a day before. His legal representatives are not liable.
- ii) If contract is not of personal nature it may be performed by Promisor / agent.
- iii) After promisor dies, legal-representatives are bound to perform - to the extent of value of property inherited.
- iv) Where a promisee accepts performance from 3<sup>rd</sup> party. He cannot afterwards enforce it against the promisor.
- v) In case of Joint Promise all parties must jointly perform.

(6) Who can demand performance?

- i) Legal-representatives
- ii) Joint Promisee
- iii) Agent
- iv) Third-party

(7) EFFECT OF FAILURE TO PERFORM:

- (i) When time is essence of Performance  
 → Contract becomes voidable at the option of other parties.
- (ii) When time is not essence of Performance

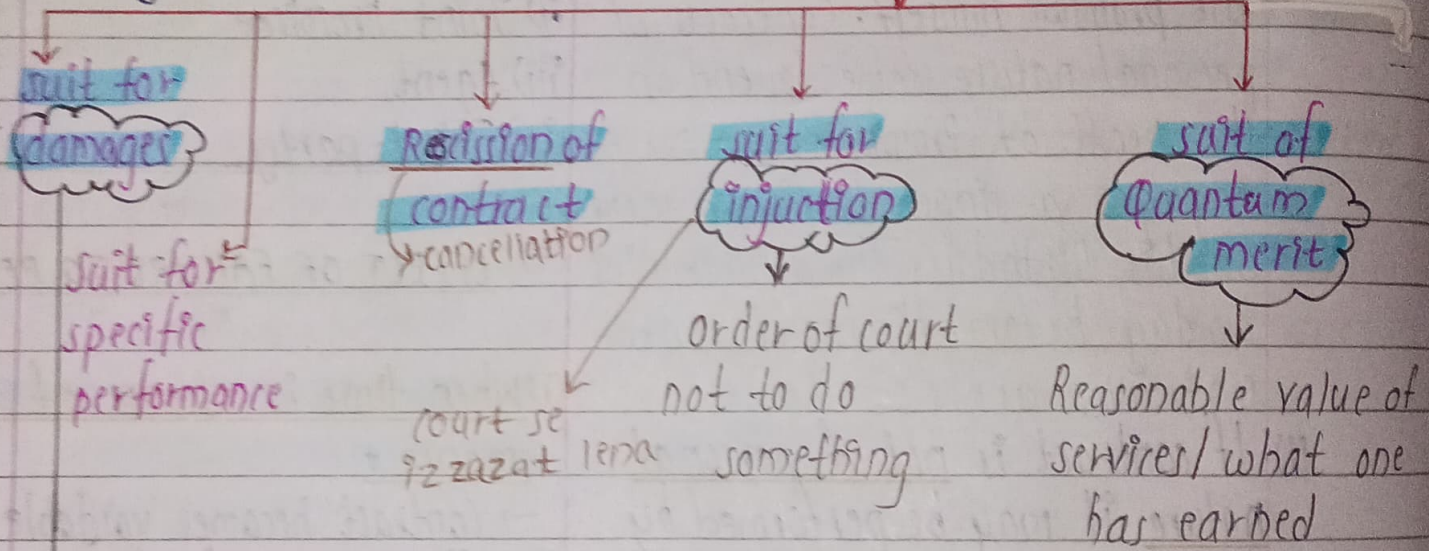
Contract becomes voidable	(+)	Damages can be Recovered
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<sup>v</sup>iolate  
→ **BREACH OF CONTRACT:-**

- (1) **Actual Breach** of contract happens when on the due date of performance / during the performance the party fails to perform his obligations. (responsibility / duty / liability)
- (2) **Anticipatory Breach** - Premature destruction of contract which can be expressed or implied.
- (3) **Aggrieved party** - would have one / more **remedies** against the guilty party.

to expect  
suffering party



**TYPES OF DAMAGES:-**

- a) **Normal Damages** - ordinary damages / loss suffered.
- b) **Nominal Damages** - No real loss suffered. But ₹1000 awarded by court.
- c) **Punitive / Vindictive** - Sole purpose is to punish the party in default.

severe damages  
Damages



→ OTHER-ASPECTS OF ICA, 1872 :-

- (1) Novation - Substitution of a New contract in place of existing contract, with new terms between same parties.
- (2) Quasi-Contract - It is not a result of agreement Express  
or  
Implied
- (3) Such Contracts are not intentionally made principle of equity is presumed here. Person cannot become Rich of the expenses of other party.  
Eg: (1) Supply of Necessaries to persons who are incompetent to contract.  
(2) Payment of money / Delivery of goods by mistake.

SECTION 71 → FINDER OF GOODS : who finds goods belonging to another person and takes them into his possession. He can sell such goods - if they are perishable in nature OR expenses of finding true owner >  $\frac{2}{3}$  of value of goods.

SECTION 70 → NON-GRATUITOUS ACT : No intention to do act gratuitously. eg: Trader leaves goods in Mr. B's house. B treats goods as his own. Mr. B is bound to pay A for them.



### IMPORTANT CASE STUDY:

X entered into a contract with Y to supply him 1000 water bottles at ₹ 5 per water bottle. The bottles were to be delivered within the specified time mentioned in the contract. Thereafter, X contracted with Z to purchase 1000 water bottles at ₹ 4.5 per water bottle and at the same time told Z that he did so for the purpose of performing his contract with Y.

Z failed to perform his contract in the due course and the 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 ~~was~~ rescinded the contract. Calculate the amount of damages which X could claim from Z. What would be your answer if Z had not informed about Y's contract?

ANS:-

The facts given in the above case study relate to breach of contract under the Indian Contract Act, 1872. Accordingly, when a contract is broken the party who suffers loss by such breach of contract is entitled to receive damages from the guilty party by way of compensation for the loss which is caused on account of such breach of contract.

The aggrieved party in the above question is Mr. X who had contracted with Mr. Y to sell water bottles (1000) after purchasing them from the guilty party Mr. Z.

Since, X had informed Mr. Z that he was purchasing water bottles for the purpose of performing contract with Y and therefore Z had the knowledge of the special ~~and~~ circumstances.

In such a situation the loss suffered by Mr. X was the difference between selling price of water bottles and the contracted price.



Damage = ~~an~~ 1000 water bottles  $\times$  loss suffered i.e., 0.5 paise.  
= 1000  $\times$  0.5

= 500 ₹ this amount can be claimed by x from z.

If x had not informed z about his contract with y, then the

Damage = 1000  $\times$  0.75 (i.e., market price of water bottles - the contracted price)  
= ₹ 750.



## \* QUASI-CONTRACTS :-

### Quasi Contract

Quasi Contracts are not created by written words <sup>OR</sup> spoken words

But they are created by law.

Eg:- Mr. M finds goods belonging to Mr. N. By law he must return them to 'N'.

### Contract

Contract is expressed by written word / oral contract and are created by conduct of parties.

→ No person is allowed to become rich at the cost of others. (Doctrine of Unjust - Enrichment).

→ Quasi Contracts are not real - contracts.

→ Types of Quasi-Contracts:-

a) Sec. 68 :- Necessaries supplied to a person who is incapable of contracting and the person is legally bound to support such incapable person eg: lunatic.

b) Non-Gratuitous Act (S. 70) :- eg: 'A' leaves goods at 'B's' house by mistake. B treats the goods his own. 'B' is actually bound to pay A for them.

c) Finder of Goods - S. 71 :- A person who finds goods belonging to some other person and takes them in his possession. Finder is responsible as a "Bailee". He must take care of goods. He has the right on goods found against the whole world.

→ except the true owner.

→ finder of lost goods can sell the goods in following circumstances:-

(a) when true owner is not found even after reasonable efforts



- (b) when goods are of a perishable-nature.
- (c) when the expenses of finding the true owner and preserving goods  $> \frac{2}{3}$  of the value of goods.

d) Sec. 72 :- Person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.

\* DOCTRINE OF PRIVACY OF CONTRACT:-

- Doctrine of POI means the contract is a private relationship between parties to agreement and no other person can acquire rights or liabilities under it.
- A person who is not the party to the contract is known as "stranger to contract".
- When the consideration is furnished by the third party on behalf of the promisor, the third party is called as "stranger to consideration".
- Stranger to a contract cannot sue but stranger to a consideration can sue.

Exceptions to the rule of stranger-

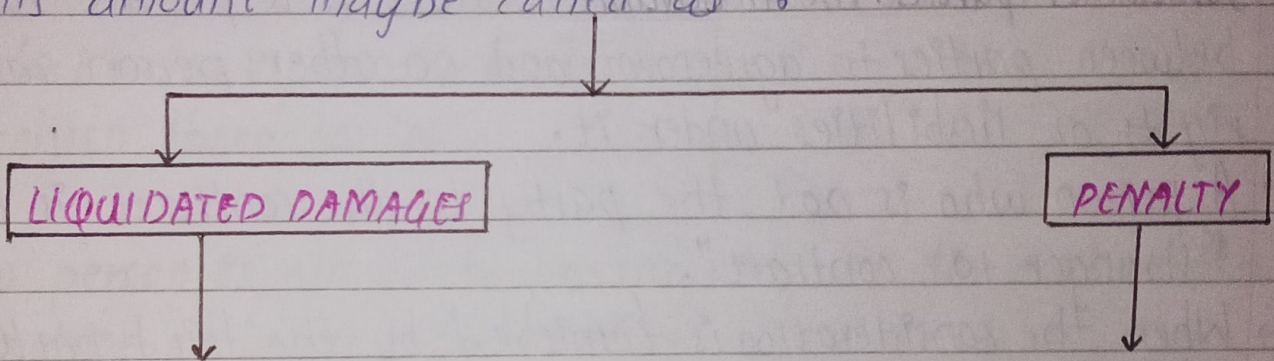
- (a) An agreement to create a 'trust' can be enforced by beneficiary even though he is not a party to the contract.
- (b) Family settlement by members of the same family.
- (c) Provision for marriage/education by elderly male members for a female child.
- (d) Principal can enforce contracts entered by agents.



- e) Covenants attached with land.
- f) Acknowledgement by third parties.  
acts like guarantor

\* LIQUIDATED DAMAGES AND PENALTY :-

→ Sometimes parties fix in advance the amount of damages that would be payable in case of breach of contract. This amount may be called as :-



fair and reasonable estimate of loss which a party may suffer due to breach of contract.

unfair and reasonable estimate of loss compelling other party to perform the contracts.



\* NOTE: Agreements against public policy

- ① Any agreement which is entered with the alien enemy is declared as void.
- ② Agreements interfering with the administration of justice is declared as void.
- ③ Champerty agreements are void agreements.
- ④ Trafficking in public places eg. bribery (void agreement)
- \* ⑤ Agreements restraining personal freedom - Article 21 of the constitution of India.
- ⑥ Agreements interfering with parental rights and duties are void agreements.
- ⑦ Agreements restraining marriage are void.



## \* AGREEMENT OF TRAFFICKING :-

Trafficking is a contract which is against the public policy and therefore such contracts are void in nature. Even if the buyer and the seller enter into such contracts it won't be regarded as valid in law as such contracts are opposed to public policy. Also, trafficking is a crime.

Example - Drug trafficking, Human trafficking shall be regarded as opposed to public policy

## \* AGREEMENTS IN RESTRAINT OF TRADE :-

Any agreement which is in restraint of trade shall be void agreement. For example - agreement in restraint of marriage. This is because the law regards marriage as a right of every individual. It must be noted that agreement in restraint of marriage of a minor is not void as it is considered in the interest of minor.

## \* JOINT PROMISOR :-

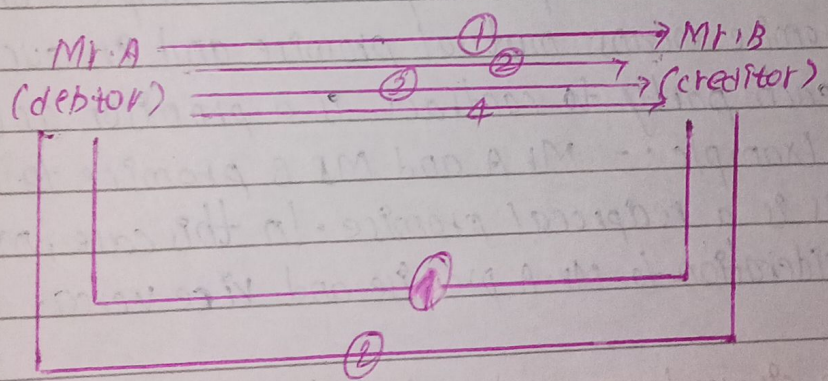
A Joint Promisor means when two or more persons have made a joint promise then ordinarily all of them during their lifetime must jointly fulfill their promise. However, if one of them dies then their legal representative jointly along with the other survivors should fulfill the promise. After the death of the last survivor the legal representatives of all must jointly fulfill the promise. The rule of joint promise says that if any of the joint promisors make a default in making their contribution then the loss must be shared by the remaining joint promisor equally.



\* APPROPRIATION OF PAYMENTS :-

When the debtor owes several debts to the same creditor and makes payment which is not sufficient to discharge all debts then in such cases the payment is appropriated as follows:

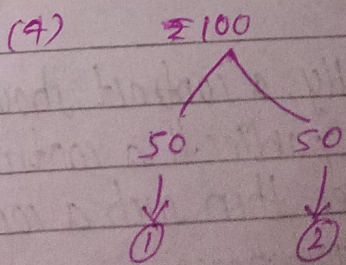
- ① The debtor can make the payment to the creditor by an express intimation (informing the creditor) or under the circumstances by implying that the payment is to be applied as a discharge of particular debts.
- ② Where the debtor has omitted to intimate <sup>judgement</sup> the creditor than the appropriation shall be made by the discretion of the creditor.
- ③ Where neither party makes any appropriation than the payment shall be applied in discharge of debt as per the order of the time when they are barred by law then the debts can be applied in equal standing i.e., they will be discharged proportionately.



(1) Dr. → Cr.  
 intimate

(2) Dr. → (1)  
 intimate

(3) order of time



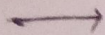




## RECIPROCAL PROMISES OR PERFORMANCE :-

A promise which forms the consideration or part of consideration for each other is a reciprocal promise. In simple words, a reciprocal promise means mutual promise and in such type of promises each party to contract is a promisor as well as a promisee. Example :- Mr. A and Ms. B promise to marry each other. This is a reciprocal promise. In this case, Ms. B's promise is a consideration to Mr. A's promise and vice versa.

Question - Give some circumstances under which the contract need not to be performed with the consent of both parties.



Ideally, a contract should be performed with the consent of both parties. If a contract doesn't require the consent of both parties then such a contract may be any of the following circumstances:

- ① Novation - All already done
- ② Alteration - Alteration of a contract means changing the terms and conditions of a contract with the consent of all parties. In an alteration the parties do not change only there



is a change in the terms and conditions. However, in a novation there may be a change of parties.

- ③ **Rescission of contract** - Rescission means when two parties agree to dissolve a contract. Rescission happens when old contract is cancelled but there is no new contract in its place.
- ④ **Waiver of contract** - A party to the contract can relinquish (waive off) his right to the contract. For example: the bank loan given to farmers can be waived off by the government. After the waiver, the party to the contract does not have any obligation and thereby it is released.
- ⑤ **Merger** - When an existing inferior right of a party in respect of a subject matter, merges into a newly acquired superior rights of the same person in respect of the same subject matter. Then the previous contract conferring the inferior rights stands discharged by way of merger.

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SHORT NOTES : - SOVEREIGN, FOREIGN AND DIPLOMATIC

One has to be cautious while entering into a contract with a foreign, sovereigns and diplomats because they cannot be sued by Indian courts, except in following circumstances:-

- ① When they have voluntarily submitted <sup>or</sup> surrendered themselves.
- ② When the person who wants to sue them has taken an approval.
- ③ It means that the foreign, sovereign and diplomat are in the privileged positions and it is not so easy to sue them, however they can sue the Indian contracting party.



## Write a short notes on suit of quantum meruit :-

Quantum Meruit means as much as merits. In simple words, quantum meruit means what one deserves. The doctrine of quantum meruit is usually applied when payment is made in proportion to the work done. The claims for quantum meruit arise on the following grounds:

- ① When there is a breach of contract - when one party performs the contract but the other party breaks, then the injured party is entitled to compensation for the work which is done.
- ② When an agreement is discovered to be void - which means that when some work has been done and also ~~is~~ accepted under the contract which is subsequently discovered to be void, then the person who has performed the ~~contract~~ is part of the work done. In the contract is entitled to recover the amount for the work which is done.
- ③ When the work has been done by the person guilty of breaching the contract - then in such case the defaulting party would be liable for the consequences of the breach, but can get the payment if the contract is divisible, and the party not at the fault has enjoyed the benefits of part performance. On the other hand, if the contract is not divisible, then the party cannot claim the benefits on account of quantum meruit.