

## THE INDIAN CONTRACT ACT, 1872

### NATURE OF CONTRACT

#### A. DEFINITIONS:

1. **Contract:** An agreement enforceable by law.
  2. **Agreement:** Every promise and every set of promises forming consideration for each other.
  3. **Enforceable by Law:** An agreement which creates legal obligation on the part of parties.
  4. **Promise:** A proposal when accepted becomes a promise.
  5. **Consideration:** Price paid by the one party for the promise of the other.
- It is also known as "QUID PRO QUO" i.e. something in return

#### B. **Essential Elements of a Valid Contract:** The essential elements of a valid contract are explained in sec-10 of The Indian Contract Act, 1871. It is explained as below

1. All Agreements are contracts
  2. If they are made by the free consent
  3. of the parties competent to contract
  4. For a lawful consideration and with a lawful object and
  5. Are not hereby expressly declared to be void.
- a. **Agreements:** In order to constitute a valid contract, there must be an agreement between the parties. To form an agreement, there should be proper offer by one and its proper acceptance by the other.
- b. **Consent:** agreed upon same thing in the same sense i.e. there should be consensus-ad-idem.
- c. **Free Consent:** Consent is said to be free when it is not caused by 1.coercion, 2.Undue influence, 3.Fraud, 4.Misrepresentation, 5.Mistake.
- E.g.: - 'A' threatened to shoot 'B' if he B does not sell his house to him Rs. 20,000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.
- d. **Parties competent to contract:** Parties must have the capacity to enter into a contract otherwise the contract is not valid.

E.g.: Who is competent to contract & who is incompetent to contract

Major	Minor
Person of Sound mind	Person of Unsound Mind
Person not disqualified by law from Contract	Person disqualified by law from contract

#### e. **Lawful Consideration:** Consideration must not be

1. unlawful,
2. Immoral or

3. Opposed to the public policy.

**E.g.**

1. An agreement for letting a house to a prostitute for carrying on her vocation there.

2. A agrees to sell narcotics to B for a sum of Rs. 1,00,000. This agreement is not valid because the consideration is unlawful.

3. Trading with enemy, Agreement in restraint of marriage, trade, legal proceedings etc.

**f. Lawful Object:** Object means the purpose or design. The object of the agreement must be lawful.

E.g.: 'A' and 'B' make an agreement for smuggling out some goods from India to another country. This agreement cannot be enforced in the court because the object is unlawful.

**g. Not Expressly Declared Void:** An agreement should not be one which is expressly declared void by the law.

**E.g.:** Agreement in restraint of trade, marriage or legal proceedings are expressly declared void by the law and hence not enforceable.

**h. Intention to Create Legal Relationship:** Parties must have an intention of creating the legal relationship. An agreement of a purely domestic or social nature is not a contract.

E.g.:

1. 'A' invites his friend 'B' to his birthday party. 'B' accepts the offer. But he fails to turn up for the party. This agreement creates social and personal relationship between 'A' and 'B'. It cannot be enforced in the court. Thus A has no legal remedy against B.

2. 'A' borrows sum of Rs. 500 from his friend 'B' for three months. 'B' gets legal right to sue upon 'A' if he fails to return money. It is because this agreement creates legal relationship, which can be enforced in the court.

Case Law: Balfour vs. Balfour (1919)

In this case a husband just makes a promise to pay his wife monthly allowance of £30 for her maintenance. Later on they separated and husband failed to pay stipulated amount to his wife. She filed suit for that allowance. But it was held by the court that such arrangements are not contracts or do not result in a contract because parties did not intend to create legal relationship and finally the suit was dismissed.

**i. Certainty of Meaning:** Agreement made by the parties must be certain or capable of being made certain.

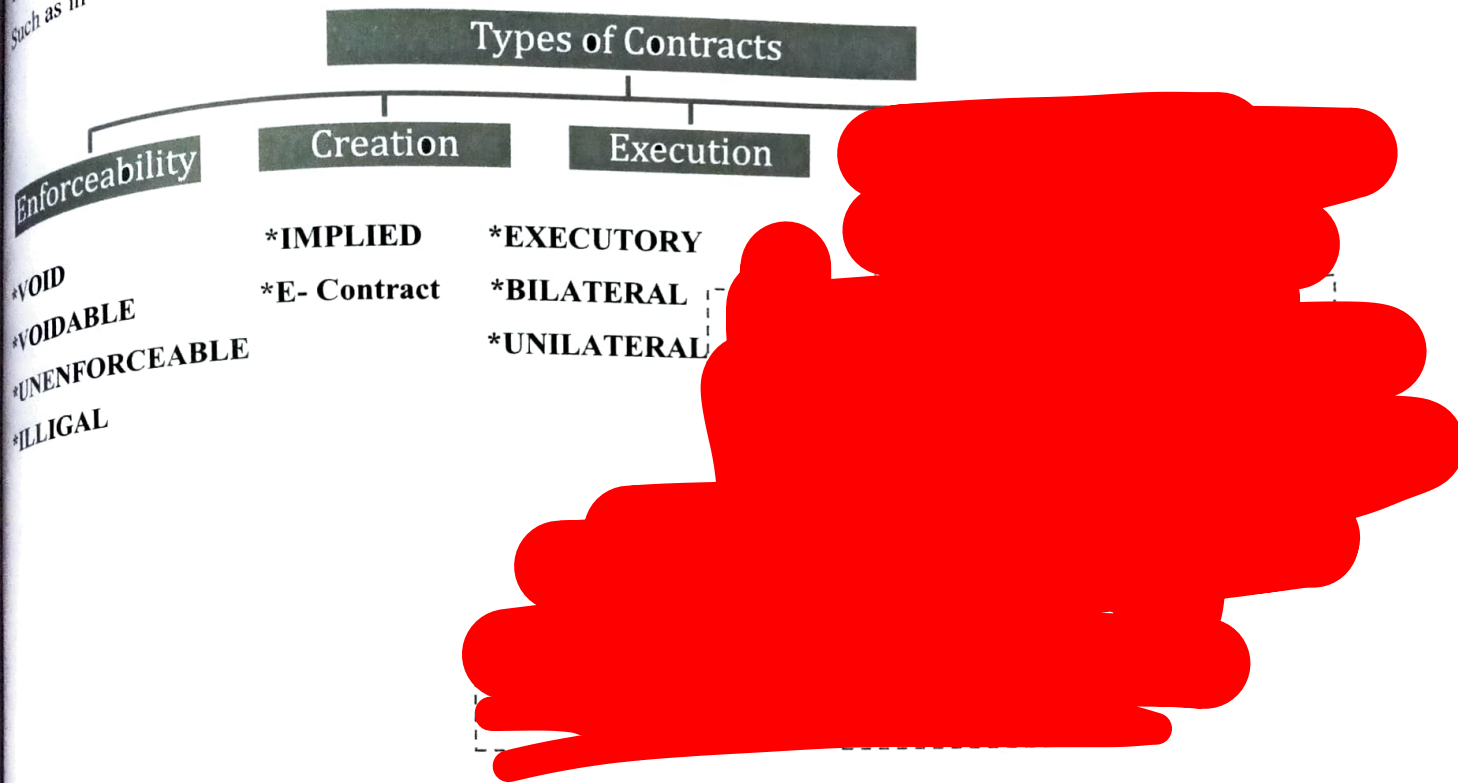
E.g.: 'A' is a dealer of kerosene oil and coconut oil. 'B' makes an agreement with him for buying 10 lts of oil. Meaning of this agreement is uncertain and therefore it cannot be enforced.

**j. Possibility of Performance:** An agreement to do an act impossible in itself is void.

Example: - An agreement to discover treasure by magic is void.

LEGAL FORMALITIES

Such as in writing, registration etc must be completed otherwise the contract is not enforceable at law.



**A. ON THE BASIS OF ENFORCEABILITY**

- Valid Contract:** A contract which contains all the essential elements.
- Void Contract:** A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.
- Void Agreement:** An agreement which is not enforceable by law is said to be void. It is an agreement which cannot be enforced from the date when they were made. It is void ab initio.
- Voidable Contract:** An agreement, which is enforceable by law at the option of one more of the parties, but not at the option of the other (s) is a voidable contract.  
E.g.: Mr. A, at knife – point, asks B to sell his scooter for Rs. 50. Mr. B gives consent. The agreement is voidable at the option of B, whose consent is not free.
- Unenforceable Contract:** An unenforceable contract is one which is good in substance but cannot be enforced by law due to some technical defects, such as under stamping, absence of writing, barred by limitation.
- Illegal Contract:** A contract which is forbidden by law.  
E.g.: Agreement to commit crime.

**B. CLASSIFICATION ON THE BASIS OF CREATION**

- Express Contract:** A contract which is created either by word spoken or written.

E.g.: If 'A' of Agra offers to sell his car for Rs. 150000 to 'B' of Delhi by a letter and 'B' accepts the offer by writing a letter. Thus the contract between 'A' and 'B' is said to be an express contract.

2. **Implied Contract:** The contract which is created otherwise than by words spoken or written. i.e. these contracts are:-

i. *Tacit Contract:* A contract which is inferred from the conduct of the parties is said to be tacit contract.

E.g.: (i) When we enter into a bus without asking any question from bus conductor, we enter into implied contract.

(ii) Obtaining cash from ATM

ii. *Quasi Contracts:* These are the contracts, which are created neither by word spoken, nor written, nor by the conducts of the parties, but these are created by the law.

E.g.: If 'A' leaves his goods at 'B's' shop by mistake, then it is 'B's' duty to return the goods or to compensate the price.

In fact, these contracts depend upon the principle that nobody will be allowed to become rich at the expense of the others. This principle is known as *doctrine of unjust enrichment*.

iii. *E-Contract:* An e-contract is one, which is entered into between two parties via internet.

### C. CLASSIFICATION ON THE BASIS OF EXECUTION

1. **Executed Contract:** An executed contract is a contract in which both the parties have performed their obligation. This is a contract which has been completed.

E.g.: If 'A' agrees to sell his car to 'B' for Rs. 100000. The contract is said to be executed if 'A' delivers car to 'B' and B pays the price to 'A'.

2. **Executory Contract:** An Executory contract is the contract which is to be performed in future.

3. **Unilateral Contract:** Where obligation is pending on the part of one of the parties.

4. **Bilateral Contract:** A Bilateral Contract is a contract in which obligation is pending on the part of both of the parties.

### D. ENGLISH LAW CLASSIFICATION

## OFFER &amp; ACCEPTANCE

## A. PROPOSAL:

1. When one person signifies to another
2. His willingness
3. To do or to abstain from doing anything
4. with a view to obtaining the assent of that
5. Either to such act or abstinence,
6. He is said to make a proposal.

## E.g.:

1. A tells B, I want to marry. This does not amount to offer but it is a mere expression of willingness.
2. A said to B, "I want to marry, Will you marry me." This would amounts to offer because in this case, the intention of A is to obtaining the consent of B.
3. D said to E, "I want to sell my bike to you." This is an offer "to do something".
4. X said to Y, "I will not file a suit against you in the court of law, if you repay the overdue amount of Rs.100000.This is an offer for "not to do something".

**Offeror:** - Person who makes the offer.

**Offeree:** - Person to whom offer is made.

The terms proposal and offer are used interchangeably to mean the same thing. A proposal would be something like "If you give me your car, I will pay you Rs. 50,000 " Only when the proposal is accepted, it becomes a promise. The assent or acceptance to a proposal can only be made by the person to whom the offer has been made. Any other person cannot accept a proposal. So in order to form an effective contract, an offer has to be communicated to the person to whom it is made and for whom it is intended and then accepted by this person. A person cannot accept an offer unless an offer is communicated to him, in other words a person cannot accept an offer unless he is aware of it. The person making the offer is called the Promisor or offeror and the person accepting the proposal is called the promisee or offeree. Promises can be of four kinds. They are

5. *Express* – When the proposal or acceptance of any promise is made in words (written or spoken), the promise is explicitly made. Eg. Any agreement for lease of property, sale of property, appointment letter for a job.
6. *Implied* – Where the proposal or acceptance is made otherwise than in words (through conduct), the promise is said to be implied. Eg. When a passenger enters into a cab, hethereby impliedly agrees to pay the fare. There may or may not be an explicit discussion but the fact that a passenger enters into a cab impliedly means that he agrees to pay the fare.
7. *Reciprocal* – Each party gives a promise in return for the other's promise. Eg. a promise to sell and purchase between A and B. A shall deliver goods to B to be paid for by B upon delivery.

8. *Alternative* – An alternative promise is one which offers the choice of one of two things. Eg A and B agree that A shall pay Rs. 1000 for which B shall afterwards deliver to A either rice or wheat.

## TYPES OF OFFER:

- 1. General offer:** An offer made to the public at large. Anyone can accept this offer by doing the desired act.
- 2. Specific offer:** An offer made to a definite person or a group of persons. Such offer can be accepted only by the specified person to whom it is made.
- 3. Cross offers:** When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers. Two cross offers cannot become a binding contract in the absence of acceptance.  
E.g.:- A makes an offer for selling out his bike to B for Rs 20000. B, in ignorance of this offer makes a similar offer for buying A's bike for Rs.20000. These two offers are called cross offers and none of these would constitute an acceptance.
- 4. Counter offer:** A qualified acceptance to the offer subject to modifications and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.  
E.g.:- A offers B, "Will you purchase my car for Rs 100000. B replies, "I will purchase but I can pay only Rs 75000 for your car." This acceptance given by B is a counter offer.
- 5. Standing, open or continuing offer:** An offer is allowed to remain open for acceptance over a period of time. E.g.:- Tender for supply of goods.

## C. REVOCATION OF AN OFFER:

3. on expiry of stipulated or reasonable time.
4. by not accepting in mode prescribed.
5. by rejection by the Offeree.
6. by death or insanity of the Offeror or Offeree before acceptance.
7. by revocation by the Offeror at any time before acceptance.
8. Revocation of standing offer at any time by giving notice to the offeree.
9. Revocation by non fulfillment of condition precedent to acceptance.
10. by subsequent illegality or destruction of subject matter.

## D. ACCEPTANCE:

1. When the person to whom proposal is made
2. Signifies his assent thereto,
3. The proposal is said to be accepted.
4. A proposal when accepted becomes a promise.

### a. LEGAL RULES AS TO VALID ACCEPTANCE:

- i. Acceptance must be absolute and unqualified: Offeree should be assented to all terms & conditions of the offer. A qualified acceptance amounts to counter offer.

- ii. Acceptance must be communicated: Mere mental acceptance is not acceptance. Acceptance cannot be made in ignorance of the offer. Mere silence is not acceptance.
- iii. Acceptance to Whom: Acceptance must be communicated to the Offeror i.e. the person who made the offer.
- iv. Mode of Acceptance: Acceptance must be in the mode prescribed in the proposal. If no mode prescribed in the proposal, the acceptance must be according to some usual and reasonable mode.
- v. Time for Acceptance: Acceptance must be given within specified time limits given in the offer. In case no time is specified in the offer, offer must be accepted within reasonable time and before the offer lapses.

**Example:** 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.

Acceptance by conduct: By performance of an act intended by the proposer.

Who can accept?

1. **Specific offer:** A Specific offer can be accepted only by the person to whom it is made.
2. **General offer:** A general offer can be accepted by anyone having knowledge of the offer by complying with the terms of the offer.

### **E. AN ACCEPTANCE TO OFFER IS WHAT A LIGHTED MATCH TO A TRAIN OF GUNPOWDER:**

According to Sir William Anson, "An acceptance to offer is what a lighted match to a train of gunpowder".

1. Offer is compared to a train of gunpowder.
2. Acceptance is compared to a lighted match.

When a lighted match is applied to a train of gunpowder, an explosion takes place. In the same way, an acceptance is given to the offer, it would result into a contract and offer cannot be revoked thereafter.

A train may be removed before match is applied to gun powder. In the same way, an offer may be revoked before it is accepted by Offeree.

### **F. COMMUNICATION OF OFFER & ACCEPTANCE:**

Communication of Offer: The communication of offer is complete when it comes to the knowledge of the person to whom it is made.

b. **COMMUNICATION OF ACCEPTANCE:** The communication of acceptance is complete-

- (a) As against the Proposer: When it is put into the course of transmission to him so as to be out of power of the acceptor to withdraw the same.
- (b) As against the Acceptor: When it comes to the knowledge of the proposer.

### **G. REVOCATION OF OFFER & ACCEPTANCE**

The communication of revocation is complete-



As against the person who makes it

When it is put into the course of transmission to the person to whom it is made so as to be out of power of the person who makes it.

As against the person to whom it is made

When it comes to his knowledge.

## **H. TIME FOR REVOCATION**

### **1. Revocation of Offer**

An offer can be revoked at any time before the communication of acceptance is complete as against the proposer.

### **2. Revocation of Acceptance**

An acceptance can be revoked at any time before the communication of acceptance is complete as against the Offeree.

### **Important case laws related to offer and acceptance**

1. *Bhagwandas Goverdhandas Kedia v. M/s. Girdharilal Parshottamdas & Co.*: In this case, the court held that a mere expression of willingness to enter into a contract does not constitute an offer. An offer must be definite and certain and must be communicated to the offeree.
2. *Ramsgate Victoria Hotel Co. v. Montefiore*: In this case, the court held that an offer remains open for acceptance until it is revoked or rejected. The offeror is bound to keep the offer open for a reasonable period of time unless a specific time period is stipulated.
3. *Lalman Shukla v. Gauri Dutt*: In this case, the court held that acceptance must be communicated to the offeror to form a valid contract. Silence or inaction does not constitute acceptance.
4. *Carlill v. Carbolic Smoke Ball Co.*: In this case, the court held that an offer can be made to the world at large, and acceptance can be through performance of the conditions mentioned in the offer. The advertisement in this case was held to be a valid offer and the act of using the smoke ball as per the instructions constituted acceptance.
5. *Balfour v. Balfour*: In this case, the court held that domestic agreements do not constitute contracts, as there is no intention to create legal relations. The husband's promise to pay his wife maintenance while he was away was held to be a domestic agreement and not a valid contract.

## **CONSIDERATION**

### **A. CONSIDERATION:**

“QUID PRO QUO” i.e. something in return. Consideration is the price agreed to be paid by the promisee for the obligation of the promisor.

1. When, at the desire of the promisor,
2. The promise or any other person

3. Has done or abstained from doing or
4. Does or abstains from doing or
5. Promise to do or to abstain from doing
6. Something,
7. Such act or abstinence or promise is called consideration for the promise.

### **B. LEGAL REQUIREMENTS REGARDING CONSIDERATION:**

1. **Consideration must move at the desire of the promisor:** Consideration must move at the desire or request of the promisor. Any act done at the desire of a third party is not consideration.

Example:- D constructed a market at the desire of the collector of the district. B, a shopkeeper of the market promised to pay commission to D on the sales affected by him. Later on B denies to pay the promised amount. D filed a suit in the court for the recovery of the amount. The court held that D cannot recover the amount from B because D has constructed the market at the desire of the collector, not at the desire of the promisor i.e. B.

2. **Consideration may move from the promisee or any other person:** Consideration may move from the promisee or any other person who is not a party to the contract. Thus, there can be a stranger to a consideration.

Example:- A, by a deed of gift transferred certain property to her daughter with the direction that daughter should pay an annuity to her sister .

The daughter executed a writing in favour of her sister agreeing to pay the annuity. Later on, she refused to pay the amount to her sister taking a plea that no consideration is given to her in return from her sister.

The court held that consideration need not necessarily move from the promisee. Hence, she is bound to pay the promised amount to her sister.

3. **Executed and Executory consideration:** If consideration under the contract has been given, it is said to be executed. If consideration under the contract is to be moved in future, it is called Executory consideration.

4. **Consideration may be past, present or future:**

- i. Past consideration: The words "has done or abstained from doing" indicates past consideration. Past consideration is no consideration in England.
- ii. Present consideration: The words "does or abstains from doing" indicates present consideration. Consideration which moves simultaneously with the promise. Example: Cash Sales.
- iii. Future consideration: The words "promise to do or to abstain from doing" indicate future consideration. Consideration which is to be performed in future.

Example: A gets booked an air ticket from Delhi to Mumbai. The flight is to be take off on the next day. In this case the consideration from A is a Past consideration and consideration is pending on the part of Airlines which is to be performed in future.

- iv. Consideration should be real, not illusory: If consideration is an illusory one, then it is not valid.
- v. Consideration need not be adequate: Though consideration is an essence of contract, adequacy of consideration is not regarded as an essence of contract. Courts do not regard the adequacy of consideration, it is at the part of promisor to consider that whether he is receiving adequate consideration or not.
- vi. The performance of an act what one is legally bound to perform is not consideration for the contract:

Example: Promise to pay money to a witness.

- vii. Consideration must not be unlawful, immoral or opposed to the public policy

### **C. A THIRD PARTY OR A STRANGER TO A CONTRACT CANNOT SUE:**

A stranger to a contract means a person who is not a party to the contract. There is a privity of contract between the parties. Therefore only a party to the contract can enforce its rights under the contract.

EXCEPTIONS:-

- i. **Trust***In case of trust, a beneficiary can sue upon the contract.*

Example:- H sued her father in law K to recover Rs 15000 being the arrears of allowance payable to her by K. K under an agreement made between K and H's father, in consideration of H's marriage to K's son D. Held that she can recover the amount because she is a beneficiary under the contract.

- ii. **Family Settlement:** In case of family settlement, if the terms of settlement are reduced into writing, members who were not originally party to the contract can also sue upon it.
- iii. **Marriage Contracts:** A female member can enforce a provision for marriage expenses made on partition of HUF between male members.
- iv. **Acknowledgement of Liability:** Where a person admits his liability, thereafter, if he refused, he will be stopped from denying his liability.

Example:- Where A receives money from B for paying it to C and A admits C the receipt of that amount. Later on if he refuses, he will be stopped from denying his liability to pay the amount.

- v. **Assignment:** In case of assignment of a contract, Where the benefit under the contract has been assigned, the assignee (the person to whom benefits of contract are assigned) can enforce upon the contract.
- vi. **Covenant running with land:** The person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced against the successor of the seller.

**NO CONSIDERATION, NO CONTRACT:**

The general rule of law is that an agreement without consideration is void.

**EXCEPTIONS****a. Agreement on account of Natural love and Affection**

WRITTEN AND REGISTERED AGREEMENT

BASED ON NATURAL LOVE AND AFFECTION

PARTIES STANDING IN NEAR RELATION

Example:- A husband by a registered document after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence, it was held that the promise was unenforceable.

**b. Compensation for past voluntary services:**

- i. Services rendered voluntarily.
- ii. Services rendered for the promisor.
- iii. Promisor must be in existence at the time of rendering services.
- iv. Promisor must have intended to compensate the promisee.

Example:- X finds Y's purse and gives it to him. Y promises to give X Rs 1000. This is a valid contract.

**c. Promise to pay time barred debt:** A promise to pay, wholly or in part a debt which is barred by law of limitation can be enforced if it is :-

- i. In writing and
- ii. Signed by the person making it or his authorized agent.

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

**e. Completed Gifts:** Gifts do not require any consideration.

**f. Charity:** A promise to contribute to charity, though gratuitous, would be enforceable, if on the faith of the promised subscription, the promisee takes definite steps in furtherance of the object and undertakes a liability, to the extent of liability incurred, not exceeding the promised amount of subscription. (Kedarnath

V. Gorie Mohammad)

Bailment

Consideration is not necessary to effect bailment. (Section 148)

**Important Cases related to Consideration**

1. Currie v. Misa: Although this case is from England, it has been widely followed in India. In this case, it was held that consideration must be something of value in the eyes of the law. It must be either a benefit to the promisor or a detriment to the promisee.

2. *Chinnaya v. Ramayya*: In this case, the court held that consideration need not move from the promisee. It is sufficient if there is some benefit or detriment to the promisor.
3. *Tweddle v. Atkinson*: Although this case is from England, it has been widely followed in India. In this case, it was held that a third-party cannot sue for non-performance of a contract unless he is a party to the contract or the contract is made for his benefit.
4. *Mohori Bibee v. Dharmodas Ghose*: In this case, the court held that if a contract is entered into with a minor or a person of unsound mind, it is voidable at the option of the minor or the person of unsound mind. The court also held that the consideration must be lawful, otherwise the contract is void.
5. *Venkata Chinnaya v. Venkataramayya*: In this case, the court held that past consideration is not good consideration. The promise must be made before the act is done and not after.

## CAPACITY TO CONTRACT

**A. WHO IS COMPETENT TO MAKE A CONTRACT:** Every person is competent to contract who is of age of majority according to the law to which he is subject, who is of sound mind and is not disqualified from contracting by any law to which he is subject.

**1. AGE OF MAJORITY:** According to Section 3 of Indian Majority Act, 1875 A minor is a person who has not completed 18 years of age. Every person domiciled in India attains majority on the completion of 18 years of age.

**Exceptions:** - In the following cases, a person attains majority on completion of 21 years of age:-

a. Where the guardian of a minor is being appointed under Guardians and Wards Act, 1890.

b. Where the superintendence of minor's property is assumed by Court of Wards.

**2. SOUND MIND PERSON:** A person is said to be of sound mind for the purpose of making a contract if at the time when he makes it he is capable of understanding it and of forming a rational judgment so as to its effect upon his interests.

a. A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind.

b. A person, who is usually of sound mind but occasionally of unsound mind, may not make a contract when he is of unsound mind.

### 3. UNSOUND MIND PERSONS:

#### Drunken

- A contract by drunken person is altogether void.
- Partial or ordinary drunkenness is not sufficient to avoid the contract.

#### Idiot

- An idiot is a person who is permanently of unsound mind.
- Such a person has no lucid intervals.

#### Lunatic

- A lunatic is a person who is mentally deranged due to some mental strain or other personal experience. However, he has some intervals of sound mind.
- A patient in lunatic asylum, who is at intervals of sound mind, may contract during those intervals.

**4. PERSONS DISQUALIFIED BY LAW:** A contract with a party incompetent to contract is void-ab-initio.

a. Alien enemy: An Alien enemy is a person who is a citizen of a foreign country which is at war with India.

(i) Contracts during the war: An alien enemy cannot enter into contract during the period of war except a license from the central government.

(ii) Contracts entered before war: Contracts entered before war are either dissolved or merely suspended for the period of war and revived after the war is over.

- b. **Statutory Corporation:** A statutory corporation cannot enter into contracts which are ultra vires its memorandum.
- c. **Municipal Bodies:** Municipal bodies cannot enter into acts which are beyond their statutory powers.
- d. **Sovereign States, Ambassadors & Diplomatic Couriers:** These persons enjoy certain special privileges. They cannot be sued in the Indian courts. However, they can enter into contracts and enforce those contracts in Indian Courts.
- e. **Convict:** A convict cannot enter into contract during the period of imprisonment.
- f. **Insolvent:** When the person is adjudged insolvent, his property stands vested in the official receiver or official assignee appointed by the court. He cannot enter into contracts in relation to property which is vested to the official assignee or receiver.

## **B. POSITION OF MINOR'S AGREEMENT:**

**1. An agreement entered into by or with a minor is void ab initio:** A minor is not competent to contract. A minor's contract being void, any money advanced to a minor cannot be recovered.

{MohiriBibi vs. DharmodasGhose (1903)}

**2. Minor can be beneficiary:** Even if a minor is incapable of contracting, still no law prevents him from taking the benefit under a contract. A promissory note executed in favour of a minor is valid and can be enforced by the minor. A minor can be payee of a cheque or other negotiable instrument.

**3. Minor as a partner:** A Minor cannot become a partner in a firm but he can be admitted to the benefits of the partnership with the consent of all partners.

**4. Minor can always pleads minority:** If a minor by fraudulently representing his age enters into contract, still minor can take the shelter of minority.

E.g.: A, a minor by fraudulently representing himself to be a major, induces B to lend him Rs.2,000. He refused to repay it and B sued him for the money. Held that the contract was void and A was not liable to repay the amount due.

Sections 30 and 33 of the Specific Relief Act, 1963 provide that in case of a fraudulent misrepresentation of his age by the minor, inducing the other party to enter into a contract, the Court may award compensation to the other party.

**5. Ratification an attaining majority is not allowed:** A minor cannot ratify the agreement on attaining the age of majority as the original agreement is void-ab-initio and therefore, validity cannot be given to it later on.

Example: 'A', a minor makes a promissory note in favour of 'B'. On attaining majority, he makes out a fresh promissory note in lieu of old one. Neither the original, nor the fresh promissory note is valid.

**Contract by minor's guardian:** A contract may be entered into on behalf of a minor by his guardian or manager of his estate. In such a case the contract can be enforced by or against the minor provided that the contract

- (a) Is within the scope of the authority of the guardian or manager, and
- (b) Is for the benefit of the minor.

**Liability for necessities:** No personal liability of minor but minor's property is liable.

In order to entitle a supplier to be reimbursed from the minor's estate, following conditions must be satisfied :-

- a. Goods must be necessities for that particular minor having regard to his condition in life.
- b. The minor must be in need of those goods both at the time of sale and delivery.
- c. The minor's estate is not liable only for necessary goods but also for necessary services rendered to him.

**Minor as an Agent:** Minor can be an agent but cannot be held personally liable for negligence or breach of duty.

**Minor as an Insolvent:** A minor cannot be adjudicated as insolvent because he is incapable of contracting.

#### Important Cases related to capacity of contract

1. *Mohori Bibee v. Dharmodas Ghose*: In this case, the court held that a contract with a minor or a person of unsound mind is voidable at the option of the minor or the person of unsound mind. The court also held that a contract made by a minor or a person of unsound mind is void ab initio and cannot be ratified after attaining majority or regaining sanity.
2. *Suresh Kumar v. Dharambir*: In this case, the court held that a contract with a person who lacks the capacity to contract is void ab initio and cannot be ratified. The court also held that a person who is not of sound mind cannot enter into a valid contract.
3. *Nash v. Inman*: In this case, the court held that a contract made by a student under duress is voidable at the option of the student. The court also held that a contract entered into by a person who is under undue influence is voidable at the option of the person who was under such influence.
4. *Kedar Nath v. Gorie Mohammad*: In this case, the court held that a contract made by a pardanashin woman (a woman who is secluded and has limited exposure to the outside world) is voidable at the option of the woman. The court also held that a contract entered into by a person who is under coercion is voidable at the option of the person who was coerced.
5. *Shushila Devi v. Hari Singh*: In this case, the court held that a person who is of unsound mind can enter into a contract if he is capable of understanding the nature and consequences of the contract. The court also held that a person who is temporarily of unsound mind can enter into a contract if he is of sound mind at the time of entering into the contract.



### **Promissory Estoppel**

A unilateral promise is a one-sided promise, intended to induce some action by the other party. The promisee is not bound to act, as there is no promise from his side. But if the promisee carries out the act desired by the promisor, he can hold the promisor to his promise. The promisor can be estopped from claiming that there is no consideration. To put it simply, if I promise to do task A if you do a particular act B, once you do B, you can hold me to my promise to do A. In this case, there is no proper contract because you may not have agreed to do B and I just promised to do A if you did B. So it was a unilateral promise from my side. However, if you did B or at least did something towards completing B on the basis that I would do A, then you can compel me to do A.

Let us consider an example. In order to erect a Town Hall at Warangal, sufficient subscription needs to be collected. To this end, the Commissioner of Warangal Municipality sets out to work to obtain necessary funds by public subscription. Sunil agrees to contribute Rs. 1000 to this fund and signs his name in the subscription book for that amount. Based on the promised subscriptions, the Municipality goes ahead with building the hall. Now, Sunil fails to pay the amount, and contends that there was no consideration for his promise. Is Sunil liable? Yes!! Persons were asked to subscribe knowing the purpose for which the money was being collected; they also knew that on the basis of their subscription, an obligation would be incurred by the Municipality to pay the contractor for the work. The act of the Municipal Commissioner in entering into a contract with the contractor, was at the desire of the Sunil (the promisor) and so constitutes consideration.

Can a promise be revoked? A promise given in return for an act is revocable (capable of being taken back) before the promisee starts acting upon the promise. Can it be revoked after the promise has commenced performance? If, for example, the promise is to pay a sum of money if the promisee walks from Hyderabad to Vijayawada, can it be revoked after the promisee has embarked upon the journey? Such a revocation is impossible. As soon as the promisee acts on the promise, promisor cannot revoke the promise. Let us consider the following case.

The owner of a house mortgages his house that is in the occupation of his son and daughter-in-law. He tells them that the house would become their property if they paid off the mortgage debt in instalments and based on this assurance, they commence the payment. At this stage, can the owner revoke this promise? No. It would be unjust if the promisor revokes this promise at this stage. He cannot revoke his promise once they start acting upon the promise.

## LEGAL REASONING

# FREE CONSENT

**A. CONSENT:** Two or more persons are said to have consented when they agree upon something in the same sense (consensus-ad-idem).

E.g.: A offers B that he wants sell his Maruti 800 to B for Rs. 50000. B replies that I can pay only Rs 40000. Since there is no consent between the parties, no contract will can be formed.

**B. FREE CONSENT:** A Consent is said to be free when it is not caused by 1. Coercion, 2. Undue influence, 3. Fraud, 4. Misrepresentation or 5. Mistake.

### C. ELEMENTS VITIATING FREE CONSENT:

**1. Coercion:** Coercion is committing or threatening to commit any act forbidden by Indian Penal Code, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

a. Threat to commit suicide amounts to coercion.

b. The agreement induced by coercion is voidable.

c. A person to whom money has been paid or anything delivered under coercion must repay or return it.

**2. Undue Influence:** A contract is said to be induced by undue influence when the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other.

\*\*A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or when he stands in a fiduciary relation to the other.

E.g.: a) Father & son b) Solicitor & Client c) Trustee & Beneficiary d) Doctor & Patient, etc.

\*\*A contract which is induced by undue influence is voidable.

**3. Fraud:** Fraud means and 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:

a. The suggestion as to fact of that which is not true by one who does not believe it to be true.

b. The active concealment of a fact by one having knowledge or belief of the fact.

c. A promise made without any intention of performing it.

d. Any other act fitted to deceive.

e. Any such act or omission as to law specially declared to be fraudulent.

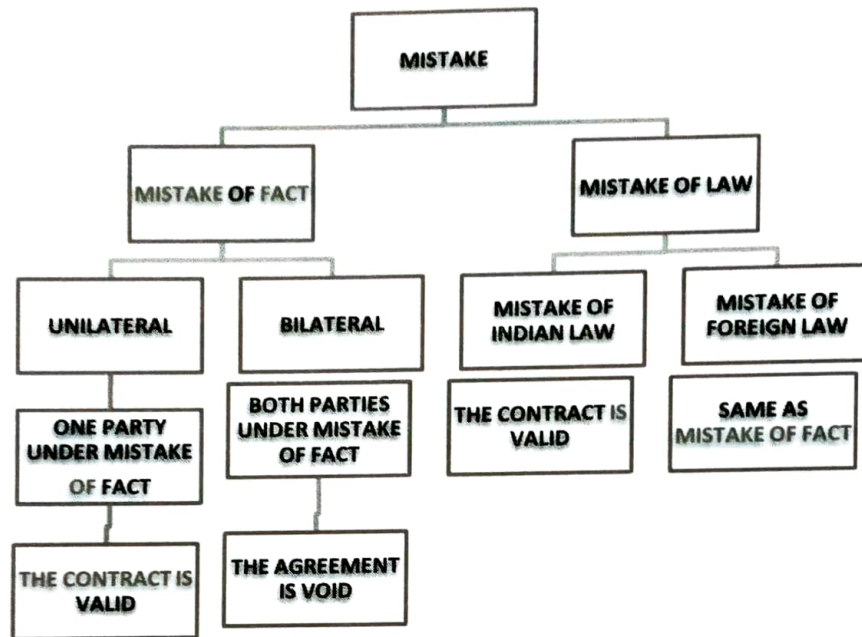
\*\*A contract induced by fraud is voidable.

**Is a mere silence amount to fraud:** No, Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud.

**Exceptions:**

1. where it is duty of the person to speak.
2. Where silence itself equivalent to speech.

**4. Misrepresentation:** Where a person asserts something which is not true though he believes it to be true, his assertion amounts to misrepresentation.



Landmark cases related to free consent:

1. *Balfour v. Balfour* (1919): This case established that there is no contract when parties do not intend to create legal relations. In this case, a husband promised to pay his wife an allowance while he was abroad, but later refused to do so. The court held that the agreement was not enforceable as there was no intention to create a legal relationship.
2. *Mohori Bibee v. Dharmodas Ghose* (1903): This case established that contracts entered into by minors or persons of unsound mind are voidable at the option of the minor or person of unsound mind. In this case, a minor mortgaged his property to a moneylender. The court held that the contract was voidable at the option of the minor as he was not competent to contract.
3. *Raffles v. Wichelhaus* (1864): This case established that there is no contract when the parties have not agreed on the same thing. In this case, the parties had entered into a contract for the sale of cotton, but there was confusion as to which shipment of cotton was being referred to. The court held that there was no contract as there was no consensus ad idem (meeting of the minds).
4. *Laxmi Narain v. Union of India* (1988): This case established that contracts entered into under coercion or undue influence are voidable at the option of the aggrieved party. In this case, the government had imposed certain conditions on the sale of a property to a private party, which were held to be coercive and hence the contract was voidable at the option of the private party.

5. *Felthouse v. Bindley* (1862): This case established that silence or inaction cannot amount to acceptance of an offer. In this case, the plaintiff had written to his nephew offering to buy a horse, and the nephew did not respond. The court held that there was no contract as silence did not amount to acceptance.

## LAWFUL CONSIDERATION & OBJECT

**A.LAWFUL CONSIDERATION & OBJECT:** Consideration or object is unlawful if it is

**1. Forbidden by law:** Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulation or orders made in exercise of the authority conferred by the legislature.

E.g.: A promises to drop prosecution which he has instituted against B for robbery and B promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

E.g.: A loan granted to the guardian of a minor to enable him to celebrate the minor's marriage in contravention of the Child Marriage Restraint Act is illegal and cannot be recovered back.

E.g.: A license to cut the grass is given to X by forest department under Forest Act. The license provides for imposition of penalty in the event of X choosing to assign his right. However if X assigns his right, the agreement would still be valid since there is no prohibition for such assignment as the consideration stipulating penalty is only to regulate the matter of administrative measure.

**2. Defeat the provisions of any law:** The term 'Law' includes any legislative enactment or rule of the Hindu and Muslim Laws or any other rule for the time being in force in India.

E.g.: Agreement in restraint of parental rights is in violation of Hindu Law.

**3. Fraudulent:** Where object or consideration is unlawful on ground of fraud.

E.g.: A, B and C enter into agreement for the division among them of gains acquired or to be acquired, by them for fraud. The agreement is void as its object is unlawful.

**4. Injury to the person or property of another:** The general term "injury" means criminal or wrongful harm. Where the object of an agreement is to cause injury to the person or property of another.

E.g.: An agreement to print a book in violation of another's copyright is void.

E.g.: A borrowed Rs. 1000 from B. A executed a bond promising to work for B without pay for 2 years and in case of default agreed to pay interest at a very exorbitant rate and the principal amount at once. Held, the contract was void.

**5. Immoral or opposed to the public policy:**

Example: - Letting house to a prostitute knowingly.

**Partial Illegality :-** If any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

E.g.: A promises to survive the business on behalf of B, a licensed manufacturer of some permissible chemicals and some contraband items. B promises to pay A a salary of Rs. 100000 per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

## Cases

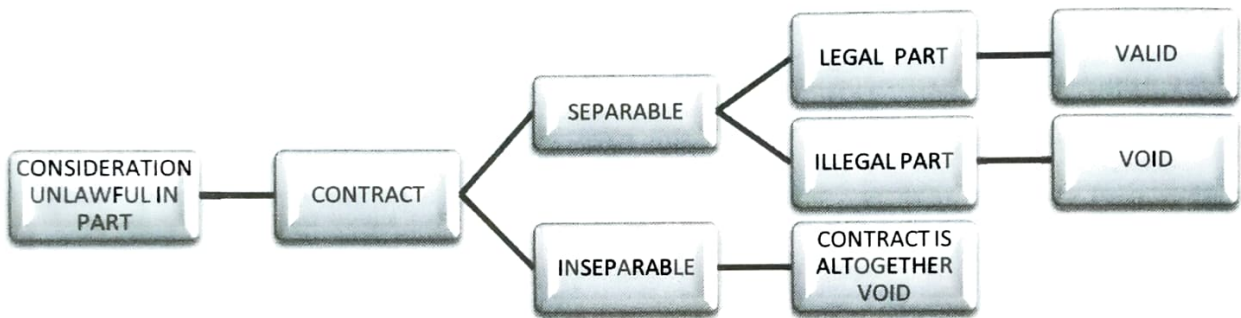
1. *Bomanji v. Nowroji* (1912): In this case, the court held that a contract without consideration is void. The court stated that consideration may be either something given, done, or abstained from by the promisor, or something given, done, or abstained from by any other person.
2. *Gherulal Parakh v. Mahadeodas Maiya* (1959): In this case, the court held that if the object or consideration of a contract is illegal, the contract is void. The court stated that an agreement to do something that is prohibited by law, or that is immoral or opposed to public policy, is illegal.
3. *Ranganayakamma v. Alwar Setty* (1916): In this case, the court held that a contract in restraint of trade is void if it goes beyond what is reasonably necessary to protect the interests of the parties.
4. *Carlill v. Carbolic Smoke Ball Co.* (1893): In this case, the court held that an offer made to the public by way of advertisement can be accepted by anyone who performs the conditions specified in the offer, and that such acceptance creates a binding contract.
5. *Lalman Shukla v. Gauri Dutt* (1913): In this case, the court held that communication of an offer is essential to create a binding contract. The court stated that a person cannot accept an offer unless he/she knows about it.

# VOID AGREEMENTS

## A. AGREEMENTS EXPRESSLY DECLARED TO BE VOID:

1. Agreements by incompetent parties (Sec. 11)
2. Agreements with unlawful object or consideration (Sec. 23)
3. Agreement made under mutual mistake of fact (Sec. 20)
4. Agreements without consideration (Sec. 25)
5. Agreements in restraint of marriage, trade or legal proceedings etc.
6. Agreements to do impossible Acts (Sec. 56)

E.g.:An agreement to discover treasure by magic is void.



**1. Uncertain meaning:** 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.

Example: A agrees to sell 100 tons of oil @ Rs. 2000 per ton to B. The agreement is void on ground of uncertainty because in which type of oil they are dealing is not clear.

**2. Wagering agreement:** It is an agreement involving payment of a sum of money upon the determination of an uncertain event. An agreement by way of wager is void.

1. No party have control over the event.
2. Collateral transactions are valid.

\*\*Speculative transactions are generally valid

### **Elements of Speculative Transactions :**

1. Mutual intention of contracting parties to acquire or deliver the commodities.
2. The undertaking or risk arising from movement in prices.

**B. AGREEMENTS OPPOSED TO THE PUBLIC POLICY:** These are the agreement which are against the moral laws of the society and contravenes any established interest of society. Following agreements are opposed to the public policy:-

**1. Trading with enemy:** Any trade with person owing allegiance to a Government at war with India without the license of the Government of India is void, as the object is opposed to public policy.

**2. Stifling prosecution:** An agreement to stifle prosecution tends to be a preservation or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony (crime). One should not convert a crime into a source of profit.

1. Compromise of public offence is illegal.
2. To drop uncompoundable offence without permission of court.

E.g.: A knew that B has committed a crime. He obtains a promise from B to pay him Rs. 20000 in consideration of not exposing B. This is a case of stifling prosecution & therefore illegal & void.

### 3. Champerty & maintenance:

i. **Maintenance:** It is the promotion of litigation in which one had no interest.

E.g.: A promises to pay B a sum of Rs. 10000 if B filed a suit against C in the court. This agreement is in the nature of maintenance and hence void.

ii. **Champerty:** It is bargain whereby one party agrees to assist the other in recovering property, with a view to sharing the profits of litigation.

E.g.: An agreement to give assistance (monetary or otherwise) to another person to recover the property by legal action and to share the proceeds of litigation is a champertous agreement.

**4. Interference with the course of justice:** An agreement whose object is to induce any judicial officer of the state to act partially or corruptly is void.

**5. Marriage brokerage contracts:** An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy.

E.g.: An agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.

**6. Interest (benefit) against obligation:** Taking a benefit against the obligation.

Example:- A, who is the manager of a firm, agrees to pass a contract to X if X pays to A Rs. 20000 privately; the agreement is void.

### 7. Sale of public office:

- i. Bribe for appointment in a public office as it interferes with the appointment of a person best qualified for the service of public.
- ii. An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.
- iii. An agreement to procure a public recognition like Padma Vibhushan for reward is void.

**8. Agreements for creation of monopolies void:** Agreements having their object the establishment of monopolies are opposed to the public policy and hence void. It is also hit by MRTP Act.

E.g.: A local body granted a monopoly to A to sell vegetables in a particular locality. Held that the agreement was void.



**9. Agreement in restraint of marriage:** Every agreement in restraint of marriage of any person, other than a minor, is void.

E.g.: A promised to marry no one else except Miss B and in default pay her a sum of Rs.100000. A married someone else and B sued A for recovery of the sum. Held, the contract was in restraint of marriage, and as such void.

**10. Agreement in restraint of trade:** An agreement by which any person is restraint from exercising a lawful profession, trade or business of any kind, is to that extent void.

**Exceptions:**

(i) Sale of goodwill

Within specified local limits
↓
Reasonable

(ii) An agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price is not an agreement in restraint of trade.

(iii) An agreement between partners not to carry on competing business during the continuance of partnership is valid.

(iv) Agreement with outgoing partner not to carry on competing business for a reasonable time will be valid. (Section 36 of Indian Partnership Act, 1932)

(v) An agreement of service by which an employee binds himself, during the term of his agreement, not to complete with his employer is not in restraint of trade.

E.g.: B, a physician and surgeon, employs A as an assistant for a term of three years and A agrees not to practice as a surgeon and physician during these three years. The agreement is valid and A can be restrained by an injunction if he starts independent practice during this period.

(vi) An agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant is not in restraint of trade.

**11. Agreement in restraint of legal proceedings:** It is one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period for starting legal proceedings. It is void.

**Exceptions –**

i. Settlement of dispute through arbitration.

ii. Question already arisen or which may arise in future refer to arbitration [such a contract must be in writing.

## PERFORMANCE OF CONTRACT

**A. PERFORMANCE OF CONTRACTS:** The parties to a contract must either perform, or offer to perform their respective promises unless such performance is dispensed with or excused under the provisions of the contract act or 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.**

### **B. BY WHOM CONTRACT MAY BE PERFORMED**

**1. Promisor himself:** If there is something in the contract to show that it was intention of the parties that the promise should be performed by the promisor himself, such promise must be performed by the promisor.

**\*This means contracts which involves the exercise of personal skill & diligence or which are founded on personal confidence between the parties must be performed by the Promisor himself.**

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

**3. Representatives:** A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the Promisor. As regards any other contract, the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherited from the deceased.

**4. Third persons:** Where the promise accepts performance of the promise from a third person, he cannot afterwards enforce it against the Promisor.

**5. Joint Promisor:** When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfill the promise.

If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise.

If all of them dies, the legal representatives of all of them must fulfill the promise jointly

### **C. SUCCESSION & ASSIGNMENT:**

a) Succession: When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, may sometimes devolve on legal heir.

b) Assignment: Benefits of a contract can only be assigned but not the liabilities there under.

**D. EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE:** When the Promisor has made an offer of performance to the promisee, and the offer has not been accepted then the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.

Conditions: -

i. It must be unconditional.

ii. It must be made at proper time and place.

iii. If the offer is to deliver anything to the promisee, promisee must have reasonable opportunity to check the goods.

\*\*An offer to one of the several promisees will have same legal consequences as an offer to all of them.

**E. EFFECT OF REFUSAL OF PARTY TO PERFORM PROMISE:** When a party to a contract has refused to perform or has disabled himself from performing his promise in entirety, the promisor may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance.

Rights to the aggrieved party

1. To terminate the contract.
2. To indicate, by words or by conduct, that he is interested in his continuance.
3. Right to claim damages.

**F. LIABILITY OF JOINT PROMISORS:**

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

**G. RIGHTS OF JOINT PROMISEES:**

1. All of them jointly have right to claim performance.
2. If any one of joint promisees dies, Survival promisee + Representatives of deceased promisee.
3. If all of them dies. Representatives of deceased promises.

**H. TIME & PLACE FOR PERFORMANCE OF THE PROMISE:**

1. No time specified for performance of promise, promise must be performed within reasonable time.
2. If promise is to be performed on a specified date but hour is not mentioned, the promisor may perform it any time during the usual hours of business, on such day .
3. Delivery must be made at the usual place of business.
4. When no place is fixed for performance of promise, it is the duty of the promisor to ask promisee to fix a reasonable place for the performance of promise.
5. When the Promisor has not undertaken to perform the promise without an application by the promisee 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.

**I. PERFORMANCE OF RECIPROCAL PROMISES:**

**1. Reciprocal Promises:** When a contract consists of two promises, one being consideration for the other, such promises are called Reciprocal promises.

E.g.: A promises to deliver 500 quintals of rice and B promises to pay the price on delivery, the contract would consist of reciprocal promises.

2. **Simultaneous performance of Reciprocal promises:** Reciprocal promises may have to be performed simultaneously or one after another.

E.g.: Where A promises to deliver 500 quintals of rice and B promises to pay the price on delivery, both the promises are to be performed simultaneously.

3. **Performance of Reciprocal promises where order of performance is expressly fixed:** When the order of performance of the reciprocal promises is expressly fixed by the contract, they must be performed in that order.

E.g.: A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B can be called upon to perform the promise to pay for it.

4. **Performance of Reciprocal promises when the order of performance is fixed by implication:**

The order of performance may sometimes be indicated not expressly, but by the nature of the transaction.

E.g.: A promises to make over stock for B and B promises to give security for the payment of price. A's promise to make over stock need not be performed until the security is given by B.

Effect of one party preventing other from performing promise

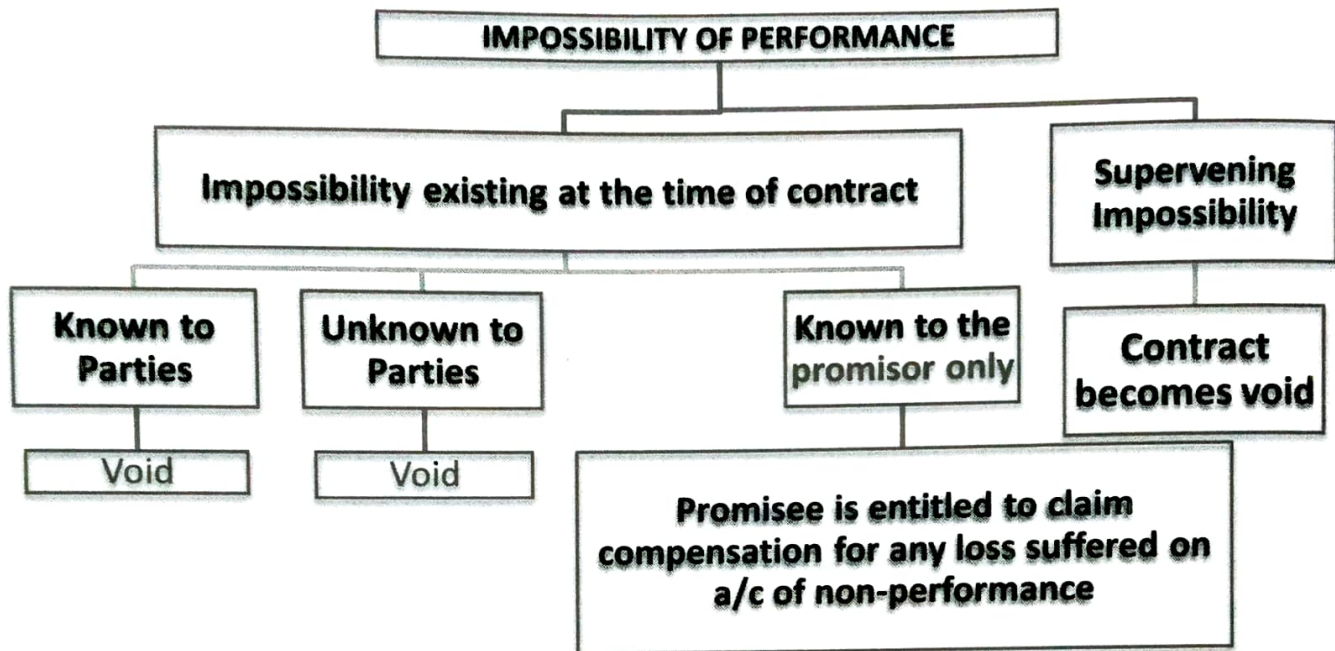
i. Contract become voidable

ii. Another party is entitled to claim compensation on A/c of by suffered due to non-performance.

5. **Reciprocal promise to do certain things that are legal:** contract, and also some other things that are illegal, Void Agreement

**1. EFFECT OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL:**

1. Where time is essential and the party fails to perform promise at or before specified time, the contract becomes voidable at the option of the Promisee.
2. Where time is not essential, the contract cannot be avoided on the ground that time for performance has expired. The promisee is only entitled to compensation from the promisor for any loss caused by delay.
3. But it must be remembered that even where the time is not essential it must be performed within a reasonable time otherwise it becomes voidable at the option of the Promisee.
4. Where time is essential, promisor fails to perform within time & promisee accept the performance, he cannot claim compensation for non-performance at time agreed unless notice of intention to claim compensation is given.

**K. IMPOSSIBILITY OF PERFORMANCE:****L. APPROPRIATION OF PAYMENTS:**

1. **Appropriation by Debtor:** Appropriation of payment where debt to be discharged is indicated by debtor, payment, if accepted, must be applied accordingly.

Latin maxim: Quickquidsoivitur, sovitursecundummodumsolventis.

2. **Appropriation by Creditor:** Appropriation of payment where debt to be discharged is not indicated by debtor, creditor is entitled to appropriate it to the debt first in time.

3. **Appropriation by Time:** Where neither party appropriates, Payment shall be applied in discharge of the debts in order of time, where they are time barred or not.

If debts are equal standing, the payment shall be applied in discharge of each proportionately.

**M. CONTRACTS WHICH NEED NOT BE PERFORMED:**

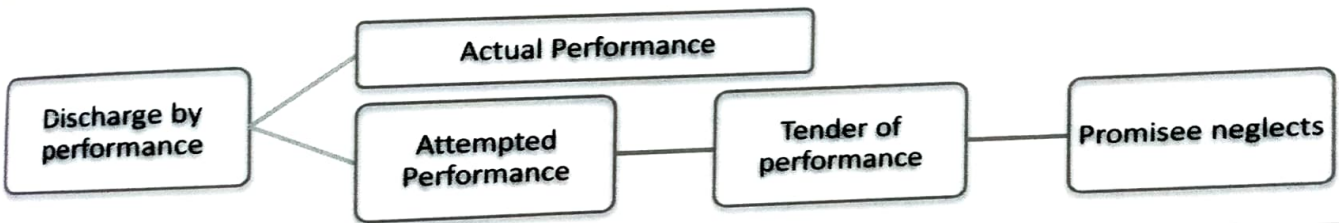
1. **Novation:** When parties to a contract substitute a new contract for old. On novation, old contract is discharged and consequently it need not to be performed. There may be change in parties.
2. **Rescission:** When parties to a contract agree to rescind it, the contract need not be performed. In this case, only old contract is cancelled no new contract is formed.
3. **Alteration:** Where parties to the contract agree to alter it, the original contract is rescinded, with the remit that it need not be performed.
  - i. No change in parties to the contract.
  - ii. Change in terms & conditions of original agreement.
4. Waiver or Remit of performance by promise

Promisee can dispense with performance without consideration and without a new contract or may extend the time of performance.

**N. RESTORATION OF BENEFIT UNDER A VOIDABLE CONTRACT:** If the person at whose option contract was voidable has rescind the contract, he shall restore the benefit (either return the goods the goods or pay for it) received there under from another party to such contract, to the person from whom it was received.

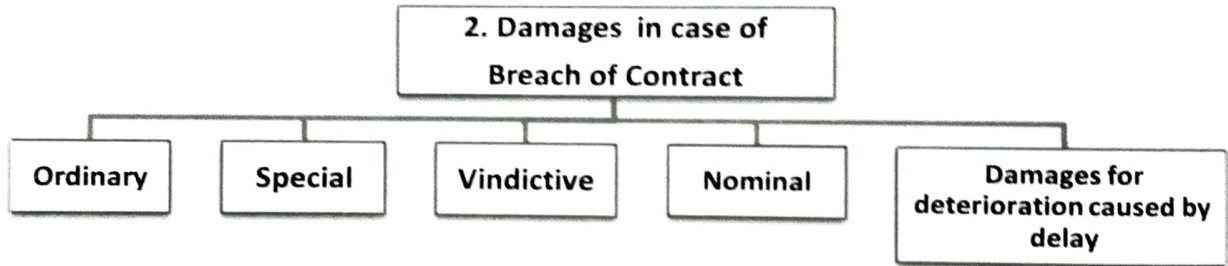
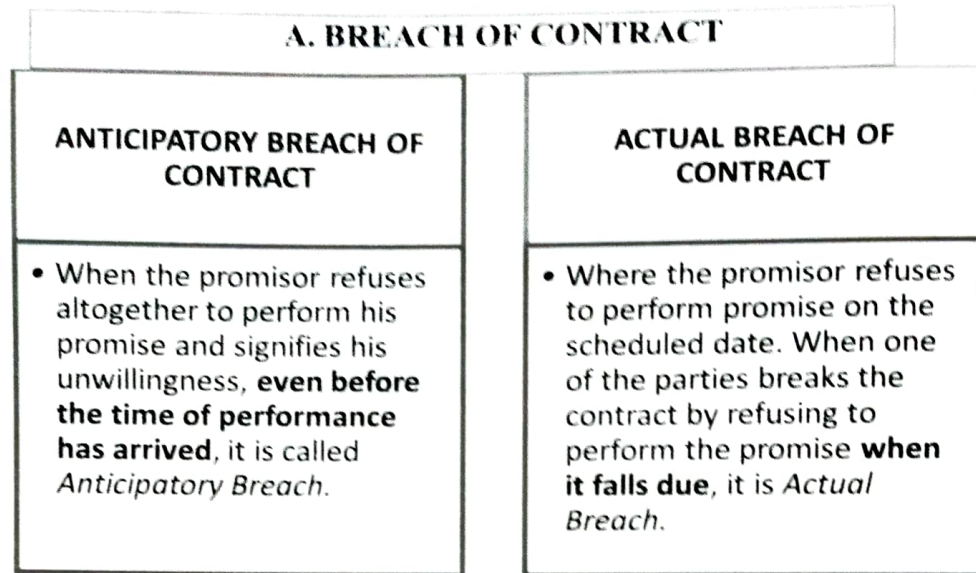
**O. OBLIGATION OF PERSON WHO HAS RECEIVED ADVANTAGE UNDER VOID AGREEMENT OR ONE BECOMING VOID:** When an agreement is discovered to be void or when a contract becomes void, any person who received any advantage under such agreement or contract must restore it, make compensation for it to the person from whom he received it. (Either restore back the advantage received or pay compensation for it)

**P. DISCHARGE OF CONTRACT:**



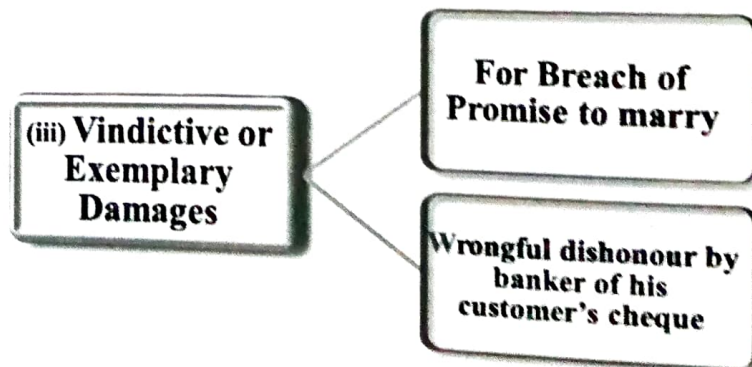
Discharge by mutual agreement – Novation, Alteration, Rescission, Remission	
Discharge by impossibility of performance.	
Discharge of lapse of time e.g. Time barred debt under Indian Limitation Act, 1963	
Discharge by operation of law such as by death of promisor, by insolvency, merger, material alteration etc.	
<b>Discharge by breach of contract</b>	
Actual Breach of Contract	Anticipatory Breach of Contract
Breach of contract at time of performance	Breach of contract before time of performance
Where promisee neglects or refuses to afford the promisor reasonable facilities for performance of promisee.	

## BREACH OF CONTRACT



**i. Normal Damages:** Compensation for any loss or damage which arises naturally in the normal course of events. Ordinary damages are calculated by measuring the difference between the contract price and market price on the date of breach.

**ii. Special Damages:** Where party to a contract receives a **notice of special circumstances** affecting the contract, he will also liable for special damages.



**iv. Nominal Damages:** These damages are awarded where the plaintiff has proved that there has been breach of contract but he has not in fact suffered any real damage.

These damages are awarded just to establish right to decree for breach of contract.

The amount may be a rupee or even 10 paise. Amount of damages depends upon loss of credit & reputation suffered on that A/c

v. **Damages for deterioration to goods caused by delay:** Damages can be recovered from the carrier even without notice. "**Deterioration**" not only implies physical damages but also loss of special opportunity for sale.

### C. HOW TO CALCULATE THE DAMAGE:

1. **Breach by buyer:** Damage = Contract price - Market price at the date of breach

2. **Breach by seller:** Damage = Market price at the date of Breach - Contract price

### D. REMEDIES FOR BREACH OF CONTRACT:

#### 1. Rescission of Contract

i. Discharge from his own obligations

ii. Entitled to compensation for damages suffered

#### 2. Suit upon Quantum Meruit:

i. **Quantum Meruit** "*As much as is earned*" Or "*According to the quantity of work done*". When the person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under contract.

He may also recover the value of work done when further performance of contract become impossible.

#### ii. Suit for Quantum Meruit arise in three cases

a. Work done and accepted under void contract.

b. Act done or something delivered non-gratuitously, the person who enjoys the benefit must pay for it.

c. Divisible Contract: - One part performed & refuses to perform other part. Party in default may sue other party who has enjoyed the benefit of past performance.

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

iv. **Suit for Injunction:** Where a party to a contract is negativating the terms of contract, the court may -be issuing an '**injunction order**' restrain him from doing what he promised not to do.



## CONTINGENT & QUASI CONTRACT

**A. CONTINGENT CONTRACT:** 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 Insurance

**B. ESSENTIAL ELEMENTS OF A CONTINGENT CONTRACT:** The performance of a contingent contract is made dependent upon happening or non-happening of some event.

Event on which performance is made to depend, is an event collateral to the contract *i.e.* it does not form part of reciprocal promises which constitute the contract.

The contingent event should not be the mere will of the promisor.

E.g. – A promise to pay Rs. 10,000, if he so chose, is not a contingent contract.

### C. RULES RELATING TO ENFORCEMENT:

**1. Contract contingent upon happening of an event:** Where a contingent contract is made to do or not to do anything if uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If event becomes impossible such contracts become void.

**2. Contract contingent upon non-happening of an event:** Where a contingent contract is made to do or not to do anything if any uncertain future event does not happen it can be enforced only the happening of that event becomes impossible and not before. If such event becomes happened, such contracts become void.

**3. Contract contingent upon future conduct of a living person:** Event shall have considered to become impossible when such person does anything which renders it impossible that he should act within any definite time or other than under further contingencies.

**4. Contract contingent upon specified event happening within fixed time:** It becomes void if at the expiry of fixed time, such event has not happened, or if before the time fixed, such event becomes impossible.

**5. Contract contingent upon specified event not happening within fixed time:** It may be enforced by law when the time fixed has expired and such event has not happened or before the time expired, if it becomes certain that such event will not happen.

**6. Agreement contingent on impossible event:** A contingent agreement to do or not to do anything, if an impossible event happens is void. The impossibility of an event may or may not be known to the parties to the agreement at the time when they entered into it.

### D. QUASI CONTRACTS:

1. Quasi contracts are based on principle of equity, justice and good conscience.
2. In the case of Quasi contracts, the promisor voluntarily undertakes an obligation in favour of the Promisee, or
3. Obligation may be imposed by law upon a person for the benefit of another even in the absence of contract.

**SALIENT FEATURES OF QUASI CONTRACTS:**

- 1. It does not arise from any agreement of the parties concerned, but it is imposed by law, and
- 2. It is a right which is available not against the entire world, but against a particular person/s only.

**TYPES OF QUASI CONTRACTS:**

1. **Claim for necessities:** supplied to a person incapable of contracting, the supplier is entitled to claim their price from the property of such a person. *E.g.* – Minor, Person of unsound mind.

2. **Right to recover money paid for another:** 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 that payment has been made by him to protect his own interest.

3. **Obligation of a person enjoying the benefit of non-gratuitous act:**

- (a) Where a person lawfully does anything for another person or delivers anything to him.
- (b) Not intending to do so gratuitously and
- (c) Such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the things so done or delivered.

4. **Responsibility of Finder of goods:** A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as a bailee.

- \* To take proper care
- \* Not use it for personal purposes
- \* Restore it to true owner, if owner is traced

5. **Liability for money paid or thing delivered by mistake or under coercion:** A person to whom money has been paid or anything delivered by mistake or under coercion must repay or return it.

G. Wagering Agreement	Contingent Contract
It is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.	It is a contract to do or not to do something if some event collateral to such contract does or does not happen.
In a wagering agreement the uncertain event is the sole determining factor.	In a contingent contract, the event is only collateral.
It is essentially of a contingent nature.	It may not be of wagering nature.
Void	Valid
Parties have no other interested in the subject matter of the agreement except the winning or losing of the amount of wager. It is a game of chance.	It is not so in this case both parties have interested in the subject matter of the contract.

## SPECIAL TYPES OF CONTRACTS

Indian Contract Law recognizes several types of contracts that are distinct from standard contracts. These contracts have unique features and are governed by specific laws and provisions.

**Agency:** An agent is a person who can represent another person who is the principal, with third parties. If X is the agent and Y is the principal, then X can act on the behalf of Y and enter into contract with any third party. The contract then is between Y and the third party. Such a relationship is called Agency. The principal authorizes the agent to represent or act for him in creating contractual relations with third parties. In order to apply the principle of principal-agent relationships, we need to first ascertain whether the person is actually an agent or does not have any such authority. The relationship of principal and agent may be created in any of the followings ways:

- 1) By actual authority to contract
- 2) By ostensible authority
- 3) By implication of law in cases of necessity

In addition to the terms and conditions of the contract between Principal and agent, there are some general duties of the agent

- 1) Follow instructions or customs
- 2) Apply reasonable care and skill
- 3) Not make secret profit from agency
- 4) Avoid conflict of interest

**Contracts of Indemnity:** A contract of indemnity is a contract where one party agrees to compensate the other party for any loss or damage suffered by the other party as a result of a specified act or event. Section 124 of the Indian Contract Act, 1872 defines a contract of indemnity as “a contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person.”

Example: A contracts with B to indemnify him against any loss that may arise due to the theft of B’s car.

Case Law: In *Gajraj Singh v. State of Rajasthan*, the Supreme Court held that a contract of indemnity arises only when there is a pre-existing obligation on the part of the indemnifier to save the indemnified from the loss.

**Contracts of Guarantee:** A contract of guarantee is a contract where one party agrees to perform the obligations of another party in case the latter fails to do so. Section 126 of the Indian Contract Act, 1872 defines a contract of guarantee as “a contract to perform the promise, or discharge the liability, of a third person in case of his default.”

Example: A guarantees to pay B’s debt to C if B fails to pay.

**Case Law:** In *UCO Bank v. Dipak Debbarma*, the Supreme Court held that a contract of guarantee is secondary in nature and is dependent on the principal contract between the debtor and the creditor. The guarantee only comes into operation when the debtor fails to perform the obligations.

**Contracts of Bailment:** A contract of bailment is a contract where one party (the bailor) delivers goods to another party (the bailee) for a specific purpose, and the bailee is obligated to return the goods to the bailor after the purpose is fulfilled. Section 148 of the Indian Contract Act, 1872 defines bailment as "the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them."

**Example:** A gives his car to B for repairs.

**Case Law:** In *Syndicate Bank v. R. Veeramani*, the Supreme Court held that in a contract of bailment, the bailee has a duty of care to take reasonable care of the goods bailed to him and to return them to the bailor in the same condition as they were received.

**Contracts of Pledge:** A contract of pledge is a special type of contract where the lender, known as the pledgee, takes possession of a property or asset as security for a loan or debt owed by the borrower, known as the pledgor. Section 172 of the Indian Contract Act, 1872 defines pledge as "the bailment of goods as security for payment of a debt or performance of a promise."

**Example:** When a person takes out a loan from a bank, the bank may ask the person to pledge their house or car as collateral for the loan.

**Case Law:** In *Smt. Indira Gandhi v. Raj Narain*, the Supreme Court held that a candidate cannot pledge a right to contest an election as security for a loan, as such a right cannot be considered property.

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**Examples:** When a person leaves their car at a valet parking service, they are entering into a contract of bailment with the valet, as the valet is obligated to return the car to the person after they are finished parking it.

**Case Law:** In *State of Gujarat v. Patel Narshi Thakershi*, the Supreme Court held that the owner of a car who entrusts it to a mechanic for repair is entering into a contract of bailment, and the mechanic is obligated to take reasonable care of the car while it is in their possession.

**Partnership** A partnership is the relation between persons or partners agree to share the profits of the business carried on by all of them or by any of them acting for all. All the partners collectively are a partnership firm. According to the Companies Act 2013, the maximum number of partners in a partnership firm is 100. The partnership firm is not separate from the persons who constitute it, i.e. it is not an entity separate from them. Accompany is a distinct legal entity and can both sue as well as be sued. A partnership however, legally, cannot do so. In a partnership firm, the partners may be held personally liable for debts and liabilities.

**Contingent Contract** 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. Insurance contracts provide the best example of contingent contracts.

Suppose a contracts to pay Rs. 10,000 to B if B's house is burnt. This is a contingent contract. Similarly, if A promises to pay B Rs. 1 lakh if a certain ship does not return in a year. The essential features of a contingent contract are:

- 1) Dependence on a future event – The performance of a contingent contract depends upon the happening or non-happening of some future event.
- 2) Collateral event – The event must be collateral to the contract.
- 3) Uncertain event – The event must be uncertain. A contingent contract is different from a wagering contract in the following manner.