


# Indian Contract Act, 1872


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- All law relating to contracts are contained in Indian Contract Act,1872.
- The Indian Contract Act came into force on 1<sup>st</sup> september,1872.
- This Act is applicable to whole of India.
- Contract Act creates right personnam.

**Contract = Agreement  
+  
Enforceable by  
law**



**Agreement = Promise/ Set  
of Promises  
forming  
Consideration**

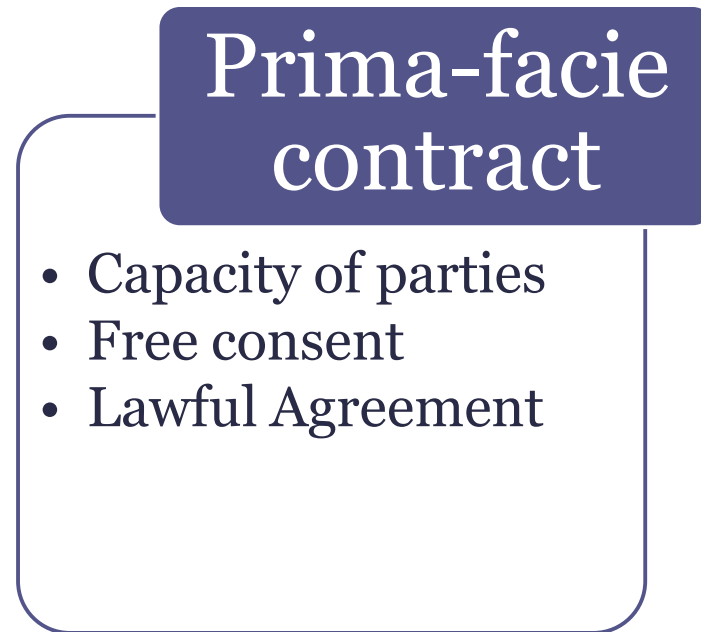
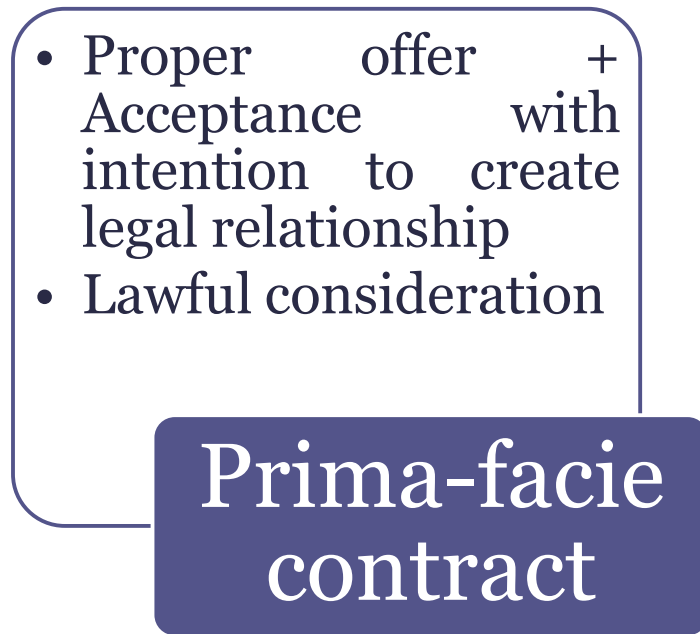


**Promise = Offer +  
Acceptance**

# Definitions :

- **Contract** : As per section 2(h), “An agreement enforceable by law.”
- **Agreement** : As per section 2(e), “Every promise and every set of promises, forming consideration for each other.”
- **Promise** : As per section 2(b), “When the person to whom offer is made signifies his assent thereto, the proposal is said to be accepted. Proposal when accepted becomes a Promise.”

# Essential elements of a valid Contract:



# Description about essential elements of A valid contract:

- **Offer and Acceptance** : Offer and Acceptance is not necessary for contract but necessary for agreement and as we know there can be no contract without Agreement.
- **Enforceability by a Law**: Intention should be to create legal relationship.
- **Lawful Consideration**: Here both the parties to contract must receive consideration and which must be lawful.
- **Capacity of Parties**: A person must be capable of contracting, he is incapable if he is minor, or person of unsound mind or he may be disqualified under any law.

- **Free Consent :** The consent will not be free if it is due to coercion, undue influence, fraud or misrepresentation.
- **Lawful Object :** The object of contract should not be unlawful , illegal or immoral.
- **Agreement should not be expressly declared void:** If agreement is expressly declared void then it can not be enforced in law.
- **Legal Formality:** Sometimes for a contract to be valid certain legal formalities have to be fulfilled.

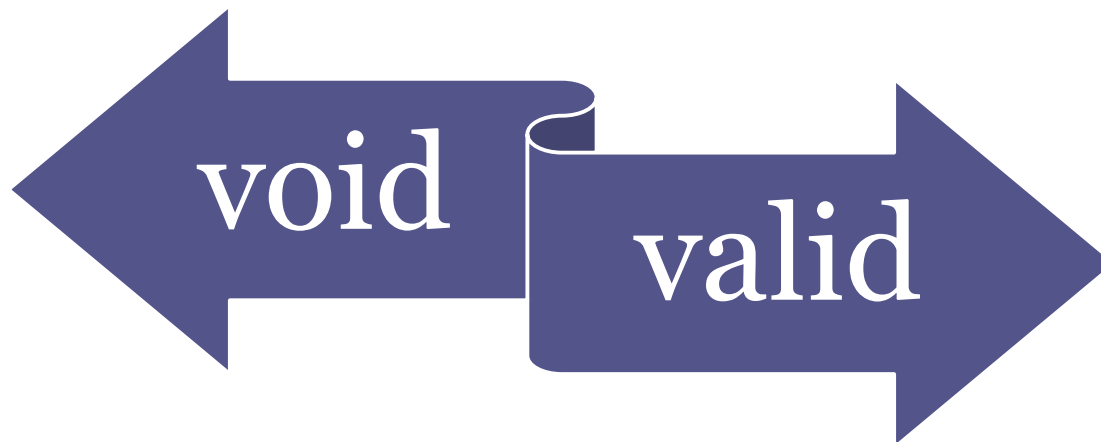
# Types of Contracts

## **On the basis of Enforceability:**

- **Void Agreement:** An agreement not enforceable by law is known as void agreement. I .e. an agreement with a minor.
- **Void Contract:** A contract which ceases to be enforceable by law **becomes** void when it ceases to be enforceable. i.e. it is valid when it is made but later on becomes void. E.g. Hitesh sir entered into a contract of sale of car it is valid contract but before the date of sale the car was destroyed in fire it is now not enforceable and void.



- **Voidable Contract:** An agreement which is enforceable by law at the option of one or more of the parties but not at the option of other or others. For e.g. A contract entered into on gun point. The party who is victim can declare the contract as valid or he has the right to cancel the same. But the party using gun point cannot have such option.



- **Illegal Agreement:** Illegal agreements are agreements having criminal nature and are not enforceable in law that's why they are void. Even collateral agreements of Illegal Agreements are also void. e.g. the contract entered into for killing someone.
- **Unenforceable Contract :** A contract which is not enforceable because of some technical defects but on rectifying the defects these contracts can be enforced in law. e.g. Contract lapsed by lack of renewal. E.g. Recharge of Dish tv.

## • TYPES ON THE BASIS OF FORMATION

- **Express Contract:** The contract entered into expressly is an Express contract. These contracts may be oral or written.
- **Implied Contract :** These contracts are not expressed in words but Implied from the behavior of parties.  
e.g. A coolie picks up the luggage of the passenger and starts walking and Passenger doesn't stop him then it is Implied Contract and Passenger has to pay money.

- **Tacit Contracts:** These contracts are a part of implied contract but it involves mechanical process. e.g. Withdrawing money from ATM, Auction Sale.
- **Quasi Contract:** These contracts are not willfully entered into but it is imposed by law on a ground of natural justice.
- **E-commerce Contract:** Contracts entered into through internet.

## ON THE BASIS OF PERFORMANCE

- **Executed contract:** Here both the parties have performed their duties under the contract.
- **Executory contract:** Where the duties are to be performed in future.
- **Unilateral Contract :** Where one party has performed its duties and the other party will perform it in future then it is known as unilateral contract.
- **Bilateral Contract:** Where both the parties have performed the contract or will perform the contract in future then it is known as Bilateral Contract.

# Proposal/Offer:

- “When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence , he is said to make a proposal.”
- For valid offer:
- A party must express his willingness to do or not to do something.
- And this expression of willingness must be made to obtain the assent of the other.

# Types of Offer:

- **General Offer** : It is an offer made to general public and therefore anyone can accept the same.
- **Special Offer** : When offer is made to a definite person or group then it is a special offer.
- **Cross Offer**: When two parties exchange identical offers in ignorance at the time of other's offer are known as Cross Offers.
- **Counter Offer**: When the offeree offers qualified acceptance then he has been said to made a counter offer.
- **Standing ,open or continuing Offer**: An offer which is allowed to remain open for a period of time.

# Conditions of a proper offer:

- The offer must be capable of creating a legal relation. A social invitation even if accepted will not be considered as a valid offer.
- The offer must be certain , definite and not vague.
- The offer may be expressed or implied.
- The offer must be distinguished from an invitation to offer.
- An offer may be specific or general.



- The offer must be communicated.
- The offer must be made with a view to obtaining the consent of the offeree.
- An Offer may be conditional.
- The offer should not contain a term non-compliance of which will amount to acceptance. E.g. An offer stating that if answer is not communicated within two days then it will amount to acceptance.

# Offer and Invitation to Offer:

- An offer is definite and capable of converting it into a contract directly.
- Whereas the Invitation to Offer is only the invitation to public to make offer and it can be converted into contract only after such offer is made by public and acceptance is made by the seller.
- E.g. The menu card of a restaurant is an invitation to offer when you order the dish it is the offer by you and if it is available then you will be served the food and this is an acceptance by the restaurant.
- Another examples of Invitation to offer are Advertisement of sale in shop, Price catalogue etc.

# Acceptance:

- Meaning: A proposal or offer is said to be accepted when a person to whom the offer is made signifies his assent to the proposal to do or not to do something.
- Acceptance must be absolute and unqualified that means it should be clear and without any condition.
- Acceptance must be communicated to the offeror.
- Acceptance must be in a mode prescribed.
- Acceptance must be made within a reasonable time.
- Mere silence is not an Acceptance.
- Acceptance by conduct is also valid.

# Communication Of Offer and Acceptance Or Revocation thereof:

- When the parties to contract are face to face , there is no problem of communication of offer or acceptance as it is made instantly.
- But the difficulty arises when the contracting parties are at distance from one another and they utilize the services of post office or telephone.
- **Communication of Offer:**
  - The communication of offer is complete when it comes to the knowledge of the person to whom it is made.
  - When the proposal is made through post then the communication will complete as and when the letter containing the proposal reaches to the person to whom it is made.

- **Communication Of Acceptance:**

- As against the Proposer, it comes to an end when the letter of acceptance is put into transmission and out of the acceptor's power to withdraw the same.
- As against the acceptor, When it comes to the knowledge of the proposer.

- **Revocation Of Offer as well as Acceptance:**

Communication of Revocation is complete:

- As against the person making it, it is complete as soon as the letter is put into a course of transmission.
- As against the person to whom it is made, it will come to an end ,when it comes to his knowledge.

- A sent a proposal to B to sell his house for two lakhs . The letter is posted on 10<sup>th</sup> March. This letter reaches to B on 12<sup>th</sup> March. B posts the letter of Acceptance on 14<sup>th</sup> March and the letter reaches to A on 18<sup>th</sup> March.
- Communication of Offer is complete as and when it comes to knowledge of B i.e. on 12<sup>th</sup> March.
- **Communication of Acceptance :**
  - As against A(Proposer), When letter is posted by B i.e. on 14<sup>th</sup> March,
  - As against B(Acceptor), When it comes to knowledge of A i.e. on 18<sup>th</sup> March.
  - **A can revoke his offer at any time before the communication of Acceptance is complete as against proposer** i.e. letter is posted i.e. before 14<sup>th</sup> March
  - **An Acceptance can be revoked by B at any time before the communication is complete as against the acceptor.** I .e. 18<sup>th</sup> March

# Consideration:

- Section 2(d): "When at the desire of promisor, a Promisee or any other person has done or abstained from doing something, or does or abstains from doing something or promises to do or abstain from doing something, such an act or abstinence or promise is known as consideration to the promisee."
- A consideration is doing or abstaining from something with desire of promisor.
- Consideration must be at the desire of the promisor.
- It may move from promisee to any other person.
- Consideration may be past, present or future.
- Consideration should be real and not illusory and it need not to be adequate.
- It must be something which a promisor is not already bound to do.

# Exceptions to the Rule- 'No consideration - No contract':

- Out of Natural love and affection:
  - It is in writing.
  - The agreement is registered.
  - The agreement must be made between the parties having immediate relation.
  - There must be natural love and affection between the parties.
- **Compensation for past voluntary services:**
  - A party renders services to the other party or renders legal obligations of the other party.
  - The act is voluntary.
  - The other party promises to compensate that other party.
  - The other party must be in existence when the services were rendered or the obligations were performed.



- **Promise to pay a time barred Debt:**

- The debt has become time barred.
- The debtor promises to pay a time-barred debt.
- The promise is made in writing.
- The promise is signed by the debtor.

- **Completed Gift:**

- Agreement to give gift is not enforceable however a donor can not demand the gift actually made on the base that there was no consideration.

- **Agency:**

- No consideration is necessary to create agency.

# Privity of Contract:

- The general rule is that a party to a contract can sue each other and no third party has a right to file a case against any of the parties.
- But it is also written that consideration may move from promisee to any other person.
- Therefore a stranger to a contract can not sue but a stranger to a consideration can sue the parties to contract.
- E.g.
  - Creation of trust or charge.
  - Marriage and Family arrangements

# Capacity of the parties:

- **Position of Minor:**

- A minor is a person who is below the age of 18 years and it is provided in law that minor is not capable of contracting .

## **Effects of an agreement with a minor:**

- **An agreement is void ab initio:** Any agreement with a minor is void ab initio means void from the very beginning.
- **An agreement with minor for the benefit of minor can be enforceable by minor**

- **Minor is not liable for restitution:** Minor can not be held liable to return the benefit which he has received under a void agreement.
- **No estoppel against minor:** Minor can not be held liable to perform the duties under the contract.
- **No specific performance can be demanded from minor.**
- **No ratification:** Even on attaining majority the agreements with minor can not be ratified.
- **Contracts by Guardian:** Contracts entered into by guardian is valid if it is for benefit of minor.
- **Minor's liability in case of necessities:** Minor's property is liable in case of necessities supplied to him or the person dependent on him.

# Position of Minor:

- He can become beneficiary.
- Agreements favouring him are valid and against him are void.
- Minor is liable for torts.
- Minor can be an agent.
- Minor can be admitted to partnership firm but for sharing profits only.

# Agreement with a person of Unsound Mind:

- Person of unsound mind is a person who is not in a condition to understand the terms of a contract and take his own decisions.
- Person of unsound mind can be classified into three types:
- Idiot: He is a person who is always of unsound mind and we can never enter into a contract with him.
- Lunatic: Lunatic is a person who is passing through the intervals of sanity and insanity .A contract with such person can be made when he is of sound mind.
- Intoxicated person: An intoxicated person is a person who is under the effect of something like alcohol, Drugs etc.... A contract with such person can be made when he is not under any of these effects.

## • Position of A person of Unsound Mind:

- A person who is usually of sound mind but occasionally of unsound mind cannot enter into a contract when he is of unsound mind.
- A person who is usually of unsound mind but occasionally of sound mind can enter into a contract when he is of sound mind.
- Position of a person of unsound mind in contract will be as similar as that of a minor.

# Contracts by disqualified persons:

- There are some persons who are disqualified under law from contracting partially or wholly.
- **Alien enemy:** During a war a person cannot enter into a contract with Alien enemy. An Alien enemy cannot sue in Indian Courts without a license from central government.
- **Statutory corporation:** A statutory corporation is disqualified from entering into a contract which is not written in their memorandum.
- **Sovereign States , Ambassadors and Diplomatic:** They are partially disqualified. They can not be sued in Indian Court . However ,they can at their will enter into contracts , which may be enforceable in Indian Court.



# Free Consent:

- According to the act , “Two or more persons are said to have consented when they agree upon the same thing in same sense (Consensus-ad-idem).
- A consent will not be free if it is due to any of the following:
  - Coercion
  - Undue Influence
  - Fraud
  - Misrepresentation
  - Mistake

- **Coercion** : Coercion is “Committing , or threatening to commit, any act forbidden by Indian penal code, or unlawful detaining or threatening to detain any property of a person, with the intention of causing a person to enter into an agreement” e.g. threatening to kill, kidnap, destroying the property and as well as threatening to commit suicide amounts to coercion

**Note:** (but from 2014 Committing Suicide is no longer a crime and will no longer be considered as Coercion)

- e.g. Jaykant Shikre threatens Hiteshsir to kill him if Hiteshsir doesn't transfer the property of Navkar in his favour.
- **Undue Influence:** Consent will be considered as caused due to Undue Influence where following two conditions are satisfied.:
  - **One party is in a position that he can dominate the will of the another party**
  - **The party having such position to take the unfair advantage of the position to make other party into contract.**

➤ **Relations where the position of influence can be presumed:**

- Father and son
- Solicitor and client
- Trustee and beneficiary.
- Teacher and student
- Doctor and patient
- Guru and Disciple
- Fiance and fiancée

➤ **Relations where no such presumption is there:**

- Husband and Wife
- Debtor and Creditor
- Landlord and Tenant
- E.g. Chandnimam emotionally influence the student to sell her car valuing Rs.5,00,000 to chandnimam for 50,000 .

• **Fraud:** fraud means and includes any of the following act committed by a party to contract or as per his instruction any act done by his agent to induce the other party or his agent to enter into a contract :

- The suggestion of a fact , which a person making the suggestion **does not believe it is true.**
- The active concealment of a fact. E.g. when seller tries to hide the defects in goods while showing them.
- A promise made without any intention of performing.
- Any other act fitted to deceive means for hurting someone or causing loss to him.
- Any such act or omission as to law specially declared to be fraudulent.
- Mere silence as to facts will generally not be considered as a fraud but when it is duty to speak and a person is keeping silence then it is Fraud;

## • Essential Elements of a fraud:

- A statement must be false.
- The person making it must believe it to be false.
- The statement is made to induce other party into contract. Mere opinion on something will not amount to fraud
- The other party must have suffered a loss.

• **Misrepresentation:** When a person asserts(states) something which is not true, though he **believes it to be true** then his assertion amounts to Misrepresentation.

- Misrepresentation can be said as unintentional fraud.

**All these elements will make the contract voidable for the party whose consent is caused by any of the manner**

# Mistake:

Mistake  
of Fact

Bilateral-  
void

Unilateral-  
Valid

Mistake  
of Law

Indian  
Law-valid

Foreign  
law - void

- There is a pre condition that mistake as to fact must be related with essential matter of contract.
- The Mistake of foreign law will be considered as mistake of a Fact.

# Lawful object and consideration:

- The object and consideration involved in the contract must be lawful.
- **Unlawful consideration or object:** An agreement the object or consideration of which is unlawful is void. “ Consideration or object is unlawful if it is forbidden by law or it would, if permitted by court will defeat the provision of any law or it is fraudulent or involves injury to person or property of another is immoral or opposed to public policy.”

# Situations where there is Unlawful Consideration and Object:

- Consideration will be unlawful in the following situations:
  - Forbidden by law
  - Defeat any provision of law
  - Defeat any rule for the time being in force in India
  - Fraudulent
  - Injury to the person or property of another
  - Immoral
  - Agreement opposed to Public Policy



## • An Agreement Opposed to Public Policy:

- Trading with enemy:
- **Stifling Prosecution:** To give money for creating a problem in course of justice or to take back the case filed.
- **Champerty and Maintenance:** Maintenance is the promotion of litigation in which one has no interest. E.g Chandnimam influences students to file a case against institute and take the fees back.
- Champerty means promotion of litigation in which one has personal interest. E.g. Chandnimam influences students to file a case against institute and give her 10% of fees refunded by institute.

- **Interference with the course of justice:** An agreement to give bribe to a judge or any other person to act corruptly.
- **Marriage Brokerage Contract:** An agreement by popatlal with a person that he will pay money to any person who finds wife for him, Deal between Salman khan and Govinda in movie partner
- **Interest against obligation:** A, a manager of a firm agrees to pass a contract to X if X pays him 2,000 privately.
- **Sale of public offices:** An agreement with a government servant to retire by paying him money. An agreement to procure a public recognition like Padma Vibhushan etc.

- **Agreement to create monopoly**
- **Agreement in restraint of marriage:** Bhide gives money to popatlal for not marrying forever.
- **Agreement in restraint of trade:** To stop someone from doing any business is void except sale of goodwill and a person selling goodwill agrees not to do similar business within some area or for a particular time period.
- **Agreement in restraint of Legal proceedings:** An agreement by which a person is restrained from exercising his legal rights completely but a reference to Arbitrator can be made.

# Agreements Expressly declared void:

- Collateral transaction to an illegal agreement
- An agreement the meaning of which is uncertain (however it can be valid if the meaning is capable of being made certain.)
- Wagering agreement: An agreement for gambling.

# Performance of Contracts:

- **Who can perform the contract:**

- ✓ Promisor himself
- ✓ Representatives
- ✓ Third party
- ✓ Joint promisors

- **Distinction Between Succession and Assignment:**

- Succession means burden and benefits both passes to the successor.
- Whereas assignment is the situation where only benefit is transferred to the assignee.

## Certain points related with performance of contract:

- If a promisor has made the offer to promise to perform his part of promise and if the promisee has not accepted then promisor is free from his liabilities and he can exercise all the rights in the contract but the offer for performance of promise must be unconditional and must be made at a proper time and promisee has been given an opportunity of being heard.
- If the promisor has refused to perform on a due date then promisee can either put an end to a contract or can claim damages.

- **Liabilities of Joint Promisors:** It is joint as well as several they are jointly liable towards third party but severally liable towards their own share.
- **Rights of Joint Promisors:** The joint promisors can claim the performance from the other joint promisors.
- **Time and Place Of performance of promise:**

If no time is specified then promise must be fulfilled at a reasonable time means during usual hours of business on such day of performance.

If no place is mentioned then at a reasonable place or a place which promisee suggests.

# Performance of Reciprocal

## Promises:

- General Observation
- Simultaneous Performance
- Expressly provided
- **Effect of one party preventing the other from performing the promise:**  
If one party prevents other from performing then the contract becomes voidable at the option of the party so prevented.
- When time is the essence of contract and a party fails to perform it within a specified time then contract is voidable at the option of other party.



# Impossibility of Performance:

## **Known at the time of Making a contract(Void Agreement)**

- When Impossibility of Performance is known at the time of making an the agreement, the agreement itself will be void
- e.g. Agreement to make a dead person alive

## **Supervening Impossibility(Void Contract)**

- When on occurrence of an event the performance of promise becomes impossible then the contract will become void
- e.g. change of law, Destruction of subject matter etc

- **Appropriation Of Payment:** Sometimes there are huge number of transactions between debtor and at the time of payment in which manner it shall be appropriated can create a problem.
- It is therefore provided that the right to take decision is firstly left on a debtor if he cannot decide then on creditor and if he is also not able to appropriate then it is set off against in FIFO method that means the earlier debt will be relieved first and it can also be a time-barred debt. Secondly the appropriation should be first towards interest and then towards Principal.
- **If a person is receiving any benefit under a voidable or a void contract then he must restore it back to the other person this is known as Doctrine of Restitution.**

# Discharge of Contract

- **Discharge by performance:** Performance can either be actual or attempted.
- **Discharge by Impossibility of performance**
- **Discharge by lapse of time**
- **Discharge by operation of law:** Death of any of the parties or any of them getting insolvent.
- **Discharge by Agreements between parties:**
- **Novation:** In this either there is new party to an old contract or an old party having new contract .e.g chandnimam joins to teach the same subject and same terms of contract in another classes or she contracts with navkar for some new work.

- Recission: Cancellation of old contract.
- Alteration: changing the terms in contract. E.g. Hiteshsir enters into contract with chandnimam to pay Rs.85 per hour instead of Rs.80.
- Remission; Accepting something less e.g. creditors agrees to accepts Rs.800 in full settlement of 1000.
- Waiver: To let go the full right receivable under an agreement
- **Discharge by Breach of contract:** Contract may be discharged by breach that means one party to contract refuse to perform his part of promise. and breach can be.....
- **Actual Breach:** On due date of performance
- **Anticipatory Breach:** Before the date of performance

# Liabilities for Damages :

- **Ordinary damages:** This loss constitute direct loss suffered by the injured party.
- **Special Damages:** When a party to a contract receives notice of special circumstances affecting the contract then he will be liable for special damages e.g. loss of profit
- **Vindictive or Exemplary damages:** It can only be awarded in two situations.....
  - Breach of promise to marry
  - Wrongful dishonour of cheque by a banker.

- **Nominal Damages:** When there is actually no loss in this situation but damages are charged for breach of contract to maintain a discipline .The amount may be a rupee or even 10 paise....
- **Damages for deterioration caused by delay.**
- **Penalty:** Pre-decided by the parties and lump sum amount and for punishment.
- **Liquidated damages:** Pre-decided by the parties and estimated as per the amount of loss.
- **Remote damages:** These are indirect damages and are not recoverable.

### **Calculation of damages:**

- ❖ **Quantum Meruit:** It means as much as earned. That means damages will be decided by the proportion of work one has performed.
- ❖ **Suit For Specific Performance:** When damages are not enough then court can order The Specific Performance from a person.
- ❖ **Suit For Injunction:** Here court will prevent the party from performing what he promised not to do.

# Contingent Contract:

- “A contract to do or not to do something if some event collateral to such contract does or does not happen”
- Contracts of insurance are of these classes

**Contingent upon Happening of Event:**

**Cannot be enforced until that event happens and if The event becomes impossible it becomes void.**

**Contingent upon Non-Happening of Event:**

**It cannot be enforced until the event becomes impossible and will become void when the event happens**

**Contract Dependent upon happening in specified time:**

**Will be void after expiry of period if event has not happened or has become impossible**

**Contract Dependent upon non-happening of an event within fixed time:**

**It can be enforceable if on expiry of term the event doesn't happen.**

**Contract contingent upon Impossible event:**

**Always void.**



# Difference between contingent and wagering agreement.

- In contingent contract the future uncertain event is collateral whereas in Wagering agreement the future event will be the main event on which the agreement is made.
- Contingent contract is valid but wagering agreements are void and illegal in Gujarat and Maharashtra.
- In wagering agreement the parties don't have interest in subject matter whereas in contingent contract they have the personal interest.

# Types of quasi contract:

- Necessaries supplied to incapable persons
- Right to recover money paid on behalf of another person
- Person having benefits under a non-gratuitous act
- Finder of goods
- Money paid or thing delivered by mistake

- Consensus ad idem means agreeing to the same thing in same sense.
- Void ab initio means void from the beginning.
- Quid-pro-quo means something in return (Consideration)
- Collateral agreements to an illegal agreements are void but collateral agreements to wagering agreements will be valid except in Gujarat and Maharashtra.

Thank You