

CHAPTER 2 THE INDIAN CONTRACT ACT, 1872

Unit 1: Nature of Contracts

Basics of Contract

Contract	An Agreement + Enforceable by Law [Sec.2(h)]
Agreement	Offer (or Proposal) + Acceptance of Offer (or proposal) Note: 1. A proposal when accepted becomes a promise. [Sec.2(b)] 2. Every promise and every set of promise forming consideration for each other is an agreement. [Sec.2(e)]
Enforceability	An agreement is said to be enforceable by law if it creates <u>some legal obligation</u> .
Usual Presumption	In Social or Domestic Agreements - That the parties do not intend to create legal relations. In Commercial or Business Agreements - That the parties intend to create legal relations.

Types of Contracts

Type of Contract	Meaning
1. Based on Creation	
(a) Express Contract	One which is made by words spoken or written .
(b) Implied Contract	One which is made otherwise than by words spoken or written .
(c) Tacit Contract	One which is inferred from the conduct of parties or circumstances of the case
2. Based on Execution	
(a) Executed Contract	Where both the parties to the contract have performed their respective obligations.
(b) Executory Contract	Where both the parties to the contract have still to perform their respective obligations.
(c) Partly Executed, Partly Executory	Where one of the parties to the contract has performed his obligation and the other party has still to perform his obligation.
(d) Unilateral Contract	One in which only one party has to perform his Promise or obligation to do forebear.
(e) Bilateral Contract	One in which both parties have to perform their respective obligations.
3. Based on Enforceability	
(a) Valid Contract	Which satisfies all the conditions prescribed by law.
(b) Void Contract [Sec.2(j)]	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable. A contract which was valid when entered into but which subsequently becomes void due to impossibility of performance due to change of law or any other reason.

(c) Void Agreement [Sec.2(g)]	An agreement not enforceable by law Note: Collateral Agreements do not become void.
(d) Voidable Contract [Sec.2(i)]	An agreement which is enforceable by law at the option of one or more of the parties but not at the option of the other or others.
(e) Illegal Agreement	One the object or consideration of which is unlawful . Note: Collateral Agreements also become void.
(f) Unenforceable Contract	A contract which is actually valid but cannot be enforced because of some technical defect . Such contract can be enforced if the technical defect is removed.

Sec. 10	"All agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not hereby expressly declared to be void ."
Essential Elements of a Valid Contract Arjun Chhabra (CS LLB LLM) Law Maven	<ol style="list-style-type: none"> 1. Proper Offer and its Proper Acceptance 2. Intention to create legal relationship 3. Free Consent 4. Capacity to Contract 5. Lawful Consideration 6. Lawful Object 7. Agreement not expressly declared void 8. Certainty of Meaning 9. Possibility of Performance 10. Legal Formalities <p>1 29 36</p>

Offer [Sec.2(a)]	
<ol style="list-style-type: none"> 1. Proposal/ Offer: Signifying to another willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence. 2. Rules <ol style="list-style-type: none"> (a) Creation of legal relationship. (b) Certain, definite and not vague. It should not contain a term the non compliance of which would amount acceptance. (c) If agreement contains a basis for ascertaining a valid term, agreement is not void on its being vague. (d) Offer can be express or implied, specific or general. (e) Communication of offer is a must. (f) Offer should be made to obtain the consent of the offeree. (g) Offer may be conditional or non-conditional. 3. Specific Offer: Made to specific person or group of persons. It can be accepted only by the person to whom the offer is made. 	

Offer = Willing + I To accept

4. **General Offer:** Made to the public at large. Not necessary for offeree to be known to the offeror. A stranger by complying with conditions of offer is deemed to have accepted the offer. [Section 8]
5. **Invitation to offer:** Proposal of certain terms on which the person is willing to negotiate and invites the other party to make an offer on those terms.
6. **Invitation to offer** = Expression of initial intention. Offer = Expression of final willingness.
7. **Cross Offer:** Two persons making identical offers to each other, in ignorance of each other's offer. One cannot be offer and other cannot be acceptance. No concluded contract.
8. **Counter Offer** - Original offer is cancelled. Acceptance has to be given to the counter offer.

ACCEPTANCE [Sec. 2(b)]

1. **Meaning of Acceptance:** Consent to the offer. When the person to whom proposal is made signifies his assent thereto, the proposal is said to be accepted.
2. **Rules:**
 - (a) Acceptance should come from an offer,
 - (b) It can be made only by the offeree,
 - (c) Should be made before the lapse of the offer,
 - (d) Performance of conditions of offer = acceptance,
 - (e) Acceptance should be for the exact terms of the offer. Any variation becomes counter offer,
 - (f) Acceptance should be communicated,
 - (g) Silence ≠ Acceptance. Exception - Offeree by his previous conduct has indicated that silence amounts to his acceptance,
 - (h) Acceptance shall be as per prescribed mode, and
 - (i) Acceptance to be made within the specified time.
3. **William Anson's saying:** Acceptance is to a proposal what a lighted match-stick is to a train of gun-powder.
4. **Special terms and conditions must be communicated in some reasonable manner.** There should be reasonable notice of such conditions on the face of the document, else acceptor is not bound.
5. **Contracts over the phone:** Duty of the acceptor to ensure/confirm that his message is duly received by the offeror.

4 5

Communication of Offer and Acceptance [Sec 4]

Communication of Offer	The communication of offer is complete when it comes to the knowledge of the person to whom it is made.
(i) Communication of Acceptance as against the proposer Complete....	In case of acceptance made by post, the proposer becomes bound by the acceptance as soon as the properly addressed and stamped letter of acceptance is duly posted even if such letter of acceptance is lost or delayed in post.
(ii) Communication of Acceptance as against the acceptor Complete....	In case of acceptance made by post, the acceptor becomes bound by the acceptance only when the letter of acceptance is actually received by proposer.

Revocation of Offer and Acceptance [Sec 5]

Meaning of Revocation	The term 'revocation' means 'taking back' or 'withdrawal'.
Time Limit within which Offer can be Revoked	An offer can be revoked at any time before the letter of acceptance is duly posted by the acceptor.
Time Limit within which Acceptance can be Revoked	An acceptance can be revoked at any time before the letter of acceptance is actually received by the proposer.
No Revocation in Case of Contract over Telephone or Telex or fax	In case of contracts over telephone or telex or fax, the question of revocation does not arise because there is instantaneous communication of the offer and its acceptance (i.e. the offer is made and accepted at the same time).
When communication of revocation complete?	Person revoking (offeror/ acceptor) - when it is put into course of transmission. Person receiving the letter of revocation (either offeror/ acceptor) - When he receives such letter of revocation.
Lapse of offer – [Section 6]	<ul style="list-style-type: none"> (a) Revocation of offer, (b) Rejection of offer, (c) Acceptance not made within a stipulated time or reasonable time, (d) Non fulfillment of conditions by the acceptor, (e) Death or insanity of offeror or offeree before acceptance, (f) Acceptance not in prescribed mode, (g) Cross and counter offers, and (h) Change in law or circumstances

The Indian Contract Act, 1872

Unit 1: Nature of Contracts - Sections Recap

1. Short title. Extent. Commencement. Saving.
2. Interpretation-clause
3. Communication, acceptance and revocation of proposals.
4. Communication when complete. ✓
5. Revocation of proposals and acceptances. ✓
6. Revocation how made. ✓
7. Acceptance must be absolute.
8. Acceptance by performing conditions, or receiving consideration. ✓
9. Promises, express and implied.
10. What agreements are contracts.

Sec. 2:

- (a) Proposal/ Offer
- (b) Promise
- (c) Promisor and Promisee
- (d) Consideration
- (e) Agreement
- (f) Reciprocal Promises
- (g) Void Agreement
- (h) Contract
- (i) Voidable Contract
- (j) Void Contract

→ Bull's eye - Unit 1 - All agreements

→ void illegal agreement

→ Intention to CR.

→ I TO

→ Acceptance must be communicated

by AP.

The Indian Contract Act, 1872

Unit 2: Consideration

1. Meaning & Definition: Consideration = something in return. [Section 2(d)]

- When at the desire of the promisor,
- the promisee or any other person,
- has done or abstained from doing, or
- does or abstains from doing, or
- promises to do or abstain from doing, something.
- Such act/ abstinence/ promise = consideration.
- No consideration = No contract.

2. Rules

1. Consideration must move at the desire of the Promisor.
2. Consideration may come from promisee or any other person
3. It is not necessary that person providing consideration should be benefitted
4. Consideration may be an act & may be an abstinence
5. Consideration may be past, present or future.
6. Consideration must be real and not illusory. Not valid if - physically impossible, legally not permissible, uncertain.
7. Consideration must be more than legal or contractual obligation
8. It must be legal.
9. Consideration can be inadequate.
10. Consideration must not be unlawful, immoral, oppose to public policy.

3. Exceptions to "no consideration no contract" – [Section 25]

(a) Written and registered agreements arising out of love and affection between parties standing in near relation, [Section 25(1)]

(b) Past Voluntary service, [Section 25(2)]

Promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor.

(c) Promise to pay a time barred debt, [Section 25(3)]

A promise to pay time barred debt is valid and enforceable if such promise is in writing & Signed by the promisor or his authorised agent.

(d) Completed gifts, [Explanation 1 Section 25]

(e) Gratuitous Bailment, [Section 148]

(f) Contract of agency, [Section 185] and

(g) Charity - If a person promises to contribute to charity and on this faith, the promisee undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid. **[Kedarnath v. Gorie Mohammad] [Abdul Aziz V. Masum Ali]**

4. Doctrine of Privity of Contract: Only those persons, who are parties to a contract, can sue and be sued upon the contract. Third party to a contract cannot sue upon it, even though the contract may be for his benefit.

5. Exceptions to Doctrine of Privity of Contract:

(a) Trust- Beneficiary may enforce the right even though he was not party to the contract.

(b) Marriage settlement, partition and other family arrangements,

- If terms of contract in writing - Member of family who was not a party to contract can enforce the same.
- (c) Acknowledgement of liability,
- (d) Assignment of a contract,
- (e) Contracts entered into through an Agent, and
- (f) Covenants running with land - The person who purchases land with, notice that the owner of land is bound by certain duties affecting the land, the covenant affecting the land may be enforced by the successor of the seller.

The Indian Contract Act, 1872

Unit 2: Consideration - Sections Recap

1. Consideration-**Section 2(d)**
2. Written and registered agreements arising out of love and affection between parties standing in near relation, **[Section 25(1)]**
3. Past Voluntary service, **[Section 25(2)]**
4. Promise to pay a time barred debt, **[Section 25(3)]**
5. Completed gifts, **[Explanation 1 Section 25]**
6. Gratuitous Bailment, **[Section 148]**
7. Contract of agency, **[Section 185]**
8. Charity **[Kedarnath v. Gorie Mohammad] [Abdul Aziz V. Masum Ali]**

The Indian Contract Act, 1872

Unit 3: Other Essential Elements of a Contract

CAPACITY TO CONTRACT [Sec 11]

1. **Persons competent:** Person attained the age of majority, Person of sound mind and Person not disqualified by law.
2. **Position of minor**
 - (a) Agreement is void ab initio
 - (b) Acts cannot be ratified on attaining majority
 - (c) No refunds of benefit received
 - (d) Not liable even in case of fraudulent representation of age.
 - (e) Cannot be a partner - except for benefits
 - (f) Partners or Guardian not liable for breach of contract by minor
 - (g) Cannot ask for specific performance of contract.
 - (h) Cannot be adjudged insolvent.
 - (i) Minor is not liable in contract
 - (j) Minor's property is liable for necessaries
3. **Necessaries**
 - (a) Essentials to run a life.
 - (b) Necessaries include services.
 - (c) Minor is not personally liable.
4. **Sound and unsound mind:** Generally unsound - Occasionally sound: can enter into a Contract when he is of Sound Mind. Generally Sound - Occasionally Unsound: cannot make a contract when he is of Unsound Mind. **[Section 12]**

FREE CONSENT [Sec 15 to 22]

Coercion [Section 15]

1. "Coercion" is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain, any property, of any person with the intention of causing any person to enter into an agreement.
2. Whether IPC is in force or not it is immaterial.
3. Both threat to person and goods
4. Threat to commit suicide = coercion.
5. Consequences - Voidable at the option of the party whose consent was so obtained. Repay the money or thing obtained under coercion.

Undue influence [Section 16]

1. A contract is said to be induced by "undue influence" where 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 over the other.
2. 2 points to remember - (i) position to dominate; (ii) use of such position to obtain an unfair advantage over the other.

<ul style="list-style-type: none">3. Consequence - Voidable contract; Contract may be set aside absolutely or upon satisfaction of the conditions. [Section 19A]4. No Presumption - Husband and Wife, Landlord and Tenant, Creditor and Debtor.

Fraud [Section 17]

- 1. False representation made to deceive the other person.
- 2. Effects - Right to rescind, Right to insist on performance, right to claim damages.
- 3. Silence is not equal to fraud. **[Explanation to Section 17]**
- 4. Exception - duty to speak and silence = speech.
 - (a) Fiduciary relationship
 - (b) Marriage contract
 - (c) Share allotment contract
 - (d) Insurance contract
 - (e) Family settlement

Misrepresentation [Section 18]

- 1. Positive false statement made without any basis for info
- 2. a breach of duty which brings advantage to person committing it
- 3. inducement of mistake about subject matter
- 4. Consequence - contract is voidable, insistence on performance. NO right for damages.

Voidability of agreements without free consent [Section 19]

When consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

A party to a contract whose consent was caused by fraud or misrepresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if the representations made had been true.

Exception. —If such consent was caused by misrepresentation or by silence, fraudulent within the meaning of section 17, the contract, nevertheless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.

Explanation. —A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

Mistake

- 1. Mistake of Fact
 - (a) Unilateral - cannot avoid contract. **[Section 22]**
 - (b) Bilateral – Void **[Section 20]**
- 2. Mistake of law - Law of land - will not affect validity of contract. Foreign Law - Treated as mistake of fact = void. **[Section 21]**

VOID AGREEMENTS / CONTRACTS [Sec 23 to 30]

- 1. Consideration or object is unlawful [Section 23]**
 - (a) Contract is forbidden by law.
 - (b) Contract if permitted will defeat the purpose of law.
 - (c) Fraudulent
 - (d) Involves or implies injury to the person or property of another.
 - (e) Court regards it as immoral or opposed to public policy.
- 2. Partially illegal: [Section 24]**
 - (a) If illegal part cannot be severed from legal part - Total contract is void.
 - (b) If it is possible to sever illegal from legal - Enforce legal part only.
- 3. Unlawful and illegal agreements**
 - (a) Unlawful agreements - Collateral agreements are not affected.
 - (b) Illegal agreements - Collateral agreements are tainted with illegality.
- 4. Agreements without consideration [Section 25]**
- 5. Agreements in restraint of marriage [Section 26]**
- 6. Agreements in restraint of trade is void [Section 27]**

Exceptions - Agreement with buyer of goodwill, trade combinations (without monopoly), service agreements with employees, agreements under Partnership Act, 1932.

 - i. Where restraint is to refrain from carrying on a similar business.
 - ii. The restraint should be within the specified local limits
 - iii. The restriction should be reasonable (i.e reasonable local limits & for reasonable time)
- 7. In restraint of legal proceedings:** Agreement restricting enforcement of rights and Agreement which curtail the period of limitation. **[Section 28]**

Exceptions - Restricting jurisdiction, disputes arising in the contract to be referred to arbitration.
- 8. Uncertain agreements:** Agreements, the meaning of which is not certain or not capable of being made certain is void. **[Section 29]**
- 9. Wagering Agreement [Section 30]**
 - (a) Promise to pay money or money's worth by one person to another on the happening or non-happening of a future uncertain event.
 - (b) Essentials - Uncertain event, mutual chances of gain or loss, neither party to have control over event, no other interest in the event, and money or money's worth.
 - (c) Effects - Contract is void. No action for recovery. No suit for breach.
 - (d) Not wagering agreements –
 - (i) sale and purchase of shares, stock and goods,
 - (ii) Prize competitions not exceeding ₹ 1000,
 - (iii) Horse race contributions for ₹ 500 or more,
 - (iv) Contracts of Insurance.
- 10. Agreements opposed to public policy: [Section 23]**
 - (a) Trading with enemy,
 - (b) Committing a Crime,
 - (c) Interference with course of justice,
 - (d) Stifling Prosecution,
 - (e) Champerty and maintenance,

- (f) Marriage brokerage,
- (g) Sale of public offices and titles,
- (h) Creation of monopolies,
- (i) Creation of interest opposed to public policy

The Indian Contract Act, 1872

Unit 3: Other Essential Elements of a Contract - Sections Recap

- 13.** "Consent" defined.
- 14.** "Free consent" defined.
- 15.** "Coercion" defined.
- 16.** "Undue influence" defined.
- 17.** "Fraud" defined.
- 18.** "Misrepresentation" defined.
- 19.** Voidability of agreements without free consent.
- 19A.** Power to set aside contract induced by undue influence.
- 20.** Agreement void where both parties are under mistake as to matter of fact.
- 21.** Effect of mistakes as to law.
- 22.** Contract caused by mistake of one party as to matter of fact.
- 23.** What considerations and objects are lawful, and what not.
- 24.** Agreement void, if considerations and objects unlawful in part.
- 25.** Agreement without consideration, void, unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law.
- 26.** Agreement in restraint of marriage, void.
- 27.** Agreement in restraint of trade, void.
- 28.** Agreements in restraint of legal proceeding void.
Saving of contract to refer to arbitration dispute that may arise.
- 29.** Agreements void for uncertainty.
- 30.** Agreements by way of wager, void.
Exception in favour of certain prizes for horse-racing.

The Indian Contract Act, 1872

Unit 4: Performance of Contract

1. Obligation of parties to 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 this Act, or of any other law.

Promises bind the representatives of the promisors in case of the death of such promisors before performance, unless a contrary intention appears from the contract. **[Section 37]**

2. Effect of refusal to accept offer of performance—Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. **[Section 38]**

3. Offer to perform: 5 Conditions –

- (a) Unconditional,
- (b) Made to the Promisee or one of the joint promisees or his authorised agent,
- (c) Made at the proper place, time and form,
- (d) Promisee should have reasonable opportunity to ascertain that Promisor is able and willing to do the whole of his promise, and
- (e) In case of delivery of goods, the Promisee should be given reasonable opportunity of inspecting those goods.

Example: A contracts to deliver to B at his warehouse, on the 1st March, 1873, 100 bales of cotton of a particular quality. In order to make an offer of a performance with the effect stated in this section, A must bring the cotton to B's warehouse, on the appointed day, under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for, and that there are 100 bales.

4. Effect of refusal of party to perform promise wholly —When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified (Expressed), by words or conduct, his consent in its continuance. But promisee may claim damages in both the cases. **[Section 39]**

5. Who can demand performance? Only Promisee. Exceptions- same as doctrine of Privity to contract. On the death of Promisee - representatives can demand performance.

6. Who can perform? Only by promisor considering nature of case, personal skill or personal confidence. **[Section 40]**

7. Effect of accepting performance from third person—When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. **[Section 41]**

8. Performance by Joint Promisors:

- a. Joint lives - all of them, (ii) death of one promisor - Representative + others, (iii) death of last survivor - representative of all promisors. **[Section 42]**
- b. Any one of joint promisors may be compelled to perform. **[Section 43]**
- c. Liability - joint and several.
- d. Default by 1 promisor - others to share the loss equally. **[Section 43]**
- e. Release of 1 joint promisor does not release others. Released promisor liable to other promisors. **[Section 44]**

9. Joint Promisees: [Section 45]

(a) (i) Joint lives - all of them, (ii) death of one promisor - representative + others, (iii) death of last survivor - representative of all promisors.
 (b) Right - Joint Only.

10. Time and Place: [Section 46 – 50]

Case	Rule
1. Where the time for performance is not specified in a contract and the promisor has undertaken to perform without application by the promisee.	The contract must be performed within a reasonable time . The question 'What is reasonable time' is a question of fact [Section 46] .
2. Where the time for performance is specified in a contract and the promisor has undertaken to perform it without application by the promisee.	The promisor must perform his promise on that particular day during the usual business hours and at a place where the promise ought to be performed [Section 47] .
3. Where the time for performance is specified in a contract and the promisor has not undertaken to perform it without application by the promisee.	The promisee must apply for performance at a proper place and within usual business hours [Section 48] .
4. Where the place for performance is not specified in a contract and the promise is to be performed without application by the promisee.	The promisor must apply to the promisee to appoint a reasonable place for the performance and to; perform the promise at such place [Section 49] .
5. Where the promisee prescribes the manner or time for performance.	The promise must be performed in the manner and at the time prescribed by the promisee [Section 50] .

11. Reciprocal promises:

Situation	Principle / Provision of Law
Sec. 51: • Contract consists of Reciprocal Promises, and • Such Reciprocal Promises are to be simultaneously performed. .	Promisor need not perform his part of promise unless Promisee is ready and willing to perform his Reciprocal Promise.
Sec. 52: If Contract expressly provides for the order of performance of Reciprocal Promises.	Promises shall be performed only in the order mentioned and not otherwise.
Sec. 52: If Contract does not provide for the order of performance.	Promises shall be performed in such order which the nature of transactions require.
Sec. 53: • Contract contains Reciprocal Promises, and • One party to the Contract prevents the other from performing his Promise.	• Contract becomes voidable at the option of the party so prevented, and • Such prevented party is entitled to compensation from the party preventing, for any

	loss sustained by him as a result of non-performance of Contract.
Sec. 54: • Contract contains Reciprocal promises and one of them - (a) Cannot be performed, or (b) Its performance cannot be claimed till the other promise is performed, • Promisor of the promise, which is to be performed first, so that the other may be performed, fails to perform his part.	• Promisor, who is at fault, cannot claim performance of the reciprocal promise. • Such defaulting Promisor shall compensate the other party to the Contract for any loss suffered by him as a result of his nonperformance.
Sec. 57: Contract contains Reciprocal Promises, and - • Certain promises therein are legal, • Under specified situations, certain other promises are illegal.	• Set of promises to do legal things is valid (i.e. a contract) • Set of promises to do illegal things is void (i.e. a Void Agreement).
12. Time as essence of contract: [Section 55] (a) Performance of promise is to be made within the specified time period (b) Upon default, the party can rescind the Contract and claim damages (c) When time is essence - At the option of the Promisee, the contract, or so much of contract as has NOT been performed, becomes voidable. (d) Compensation: Cannot be claimed if promisee accepts delayed performance. When notice was given, compensation can be claimed. (e) When time is not essence - Not voidable. Promisee entitled for compensation.	
13. Impossibility (a) Agreement Void [Sec. 56]: An Agreement to do an act impossible in itself is void ab-initio. Whether the fact of impossibility was known to the parties or not is immaterial. (b) Contract becomes Void [Sec. 56]: When the Contract was capable of performance at the time of making it, but subsequently due to some event beyond the control of the Promisor, performance becomes impossible or unlawful, the Contract becomes Void i.e. subsequently rendered void. (c) Obligation of person who has received advantage under void agreement, or contract that becomes void. —When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it. [Restoration of benefit – Section 65]	
14. Alternative promise, one branch being illegal. —In the case of an alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced. [Section 58]	

15. Appropriation of Payment (a) When a debtor owes several distinct debts to a Creditor and makes a payment insufficient to satisfy the whole indebtedness, a question arises: To which debt should the payment be appropriated? 3 rules -

- Debtor intimates the order (Express intimation or implied from circumstances) - Creditor must do so. **[Section 59]**
- No intimation from the debtor - at the discretion of Creditor. **[Section 60]**
- No intimation from debtor and Creditor fails to appropriate - Discharge the debts in order of time. If the debts are of equal standing, the payment shall be applied in discharge of each proportionably. **[Section 61]**

Debtor owes ₹10,000 (Jan 1, 2021), ₹5,000 (Jun 1, 2021), ₹15,000 (Jan 1, 2022), and ₹20,000 (Jan 1, 2022). A ₹20,000 payment on Jun 1, 2023, with no specified allocation, is applied first to the oldest debts: ₹10,000 (Jan 2021) and ₹5,000 (Jun 2021), leaving ₹5,000. The remaining ₹5,000 is split proportionally between the equal standing debts of ₹15,000 and ₹20,000, resulting in payments of approximately ₹2,142.86 and ₹2,857.14 respectively

(b) Creditors can apply the payment against Time Barred Debt.

16. Discharge Of Contract

1. By performance
2. By lapse of time
3. By operation of law - death, insolvency, merger, unauthorized alteration of terms and vesting of rights.
4. By mutual agreement – Novation **(Section 62)** (substitution), Rescission **(Section 62)** (termination), Alteration **(Section 62)** (change in terms), Remission **(Section 63)** (accepting lesser fulfillment of promise) and Waiver **(Section 63)** (relinquishment of right)
5. Impossibility of performance - initial impossibility (void ab initio), subsequent impossibility - void.
6. Actual Breach and Anticipatory Breach.

17. Consequences of rescission of voidable contract. —When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is promisor. The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received. **[Section 64]**

Example:

Parties: A (Seller) and B (Buyer)

Contract: A agrees to sell a car to B for ₹500,000.

Condition: B can rescind the contract if the car is not in the promised condition.

Event: B discovers significant issues with the car and rescinds the contract.

Consequences: A no longer needs to deliver the car, and A must return the ₹500,000 to B.

<p>18. Mode of communicating or revoking rescission of voidable contract. —The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to the same rules, as apply to the communication or revocation of a proposal. [Section 66]</p> <p>19. Effect of neglect of promisee to afford promisor reasonable facilities for performance. —If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. [Section 67]</p> <p>Example: A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the non-performance of the contract if it is caused by such neglect or refusal.</p>
--

<i>Succession</i>	<i>Assignment</i>
<p>When the benefits to a Contract are succeeded to by process of law, then both burden and benefits attaching to the Contract, may sometimes devolve on the legal heir.</p> <p>Example: where a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his time. But, if the debts owned by his father exceed the value of the estate inherited by the son, then he would not be called upon to pay the excess. The liability of the son will be limited to the extent of the property inherited by him.</p>	<p>If a Creditor assigns the benefits of a promise, he thereby entitles the Assignee to realize the debts from the Debtor.</p> <p>In case of assignment, the benefit of a Contract can only be assigned but not the liabilities thereunder. This is because when the liability is assigned, a third party gets involved therein.</p> <p>Where the benefit is coupled with a liability or when a personal consideration has entered into the making of the Contract, then the benefit cannot be assigned.</p>

<i>The Indian Contract Act, 1872</i>
<i>Unit 4: Performance of Contract Sections Recap</i>
37. Obligation of parties to contracts.
38. Effect of refusal to accept offer of performance.
39. Effect of refusal of party to perform promise wholly.
40. Person by whom promise is to be performed.
41. Effect of accepting performance from third person.
42. Devolution of joint liabilities.
43. Any one of joint promisors may be compelled to perform. Each promisor may compel contribution. Sharing of loss by default in contribution.
44. Effect of release of one joint promisor.
45. Devolution of joint rights.