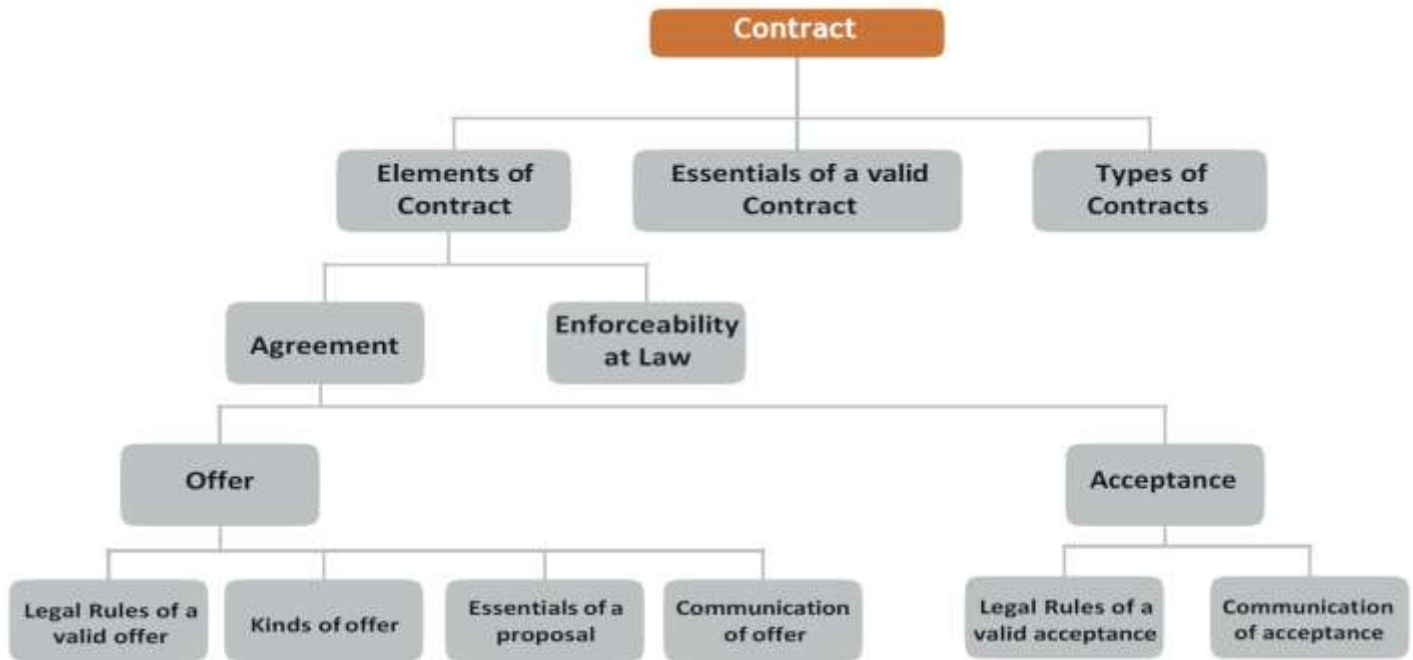


STUDY NOTE 1

THE INDIAN CONTRACT ACT 1872

UNIT 1.1 ESSENTIALS ELEMENTS OF A CONTRACT, OFFER AND ACCEPTANCE



Law revolves around rights and liabilities.

In India people have three types of rights:

- (a) Human Rights.
- (b) Constitutional Rights.
- (c) Contractual Rights.

These are explained below in brief -

(a) Human Rights: There is no law. United Nations have adopted an Universal Declaration of Human Rights which has been adopted by member countries including India. We have National Human Rights Commission and State Human Rights Commission. Human is above common law.

(b) Constitutional Rights: This is available to all citizens as per constitution. Basic rights are called fundamental rights and if Govt. or Govt. organisation violates any right, remedy is available to the citizen by making written petition to High Court.

(c) Contractual Rights: These are rights and obligations created voluntarily between parties by making contracts.

Introduction

- ❖ Before enactment of Indian Contract Act, 1872, the courts in India used to apply *English Common laws* as suited to Indian conditions, customs and usages.
- ❖ Some difficulties were noticed in using English Common laws. Accordingly later the courts started deciding cases based on *Hindu Personal laws and Muslim personal laws*.
- ❖ But the same were still not found fit to address the *business complexities*.
- ❖ Accordingly *separate Indian Contract Act, 1872 was enacted*. This Act is based on English Common law, which is to a large extent made up of judicial precedents.

The law relating to contracts is contained in the Indian Contract Act, 1872. The Act as originally enacted is divided into four parts:

1. Law relating to general principles of contract.
2. Law relating to sale of goods. [Sec. 76 - 123] **
3. Law relating to special contracts [Sec. 124 - 238]
(Contract of Indemnity and Guarantee, Bailment, Pledge, Contract of Agency)
4. Law relating to Partnership business [Sec. 239 - 266] **

Note:

** These sections are **repealed** from the Indian Contracts Act and two new Acts were enacted for the same. They are:

1. The Sale of Goods Act, 1930
2. The Indian Partnership Act, 1932.

The Indian Contracts Act came into force on 1st September, 1872. The act is applicable to the whole of India except for the state of Jammu and Kashmir.

WHAT IS A CONTRACT?

The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as- "an agreement enforceable by law".

The contract consists of two essential elements:

- I. an agreement, and
- II. its enforceability by law.

- ❖ Pollock defines contract as "Every agreement and promise enforceable at law is a contract"
- ❖ Another definition of Contract given by Salmond is "contract is an agreement creating and defining obligations between the parties."
- ❖ From the above analysis of the definition of contract, it is clear that contract is based on enforceability of an agreement. So agreement and its enforceability are two essential component of a contract. If either of these two is missing there is no contract

Agreement -

The term 'agreement' given in Section 2(e) of the Act is defined as- "every promise and every set of promises, forming the consideration for each other".

To have an insight into the definition of agreement, we need to understand promise.

Section 2 (b) defines promise as- "when the person to whom the proposal is made signifies his assent there to, the proposal is said to be accepted. Proposal when accepted, becomes a promise".

Agreement = offer/Proposal + Acceptance

Enforceability by law

An agreement to become a contract must give rise to a legal obligation which means a duly enforceable by law.

Thus from above definitions it can be concluded that -

Contract = Accepted proposal/Agreement + Enforceability by law



Basis of differences	Agreement	Contract
Meaning	Every promise and every set of promises, forming the consideration for each other. Offer + Acceptance	Agreement enforceable by law. Agreement + Legal enforceability
Scope	It's a wider term including both legal and social agreement.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
Legal obligation	It may not create legal obligation. An agreement does not always grant rights to the parties	Necessarily creates a legal obligation. A contract always grants certain rights to every party.
Nature	All agreement are not contracts.	All contracts are agreements.

Will all agreements give rise to a contract?

- ✚ An agreement to become a contract must give rise to a legal obligation. Agreement can be social obligation or legal obligation.
- ✚ An agreement giving rise to social obligation is not a contract. That is why it is said that the term agreement is a wide term it includes both social and legal obligations but only those agreements which the parties intend to enforce legally culminate into contract.
- ✚ An agreement is regarded as a contract when it is enforceable by law.
- ✚ Legal obligations arise to make an agreement, a contract. It means that an agreement must give legal rise to legal obligations. There must be an intention to create legal obligation.
- ✚ In case of agreement regulating business relation it is assumed that the parties intended legal consequences.

Definitions u/s. 2 of the Indian Contract Act, 1872

An agreement to become a contract must give rise to a legal obligation.

Section	Defines	As
2 (a)	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
2 (b)	Promise	When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise
2 (c)	Promisor and Promisee	The person making the proposal is called the "promisor", and the person accepting the proposal is called the "promisee"
2 (d)	Consideration	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 to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.
2 (e)	Agreement	Every promise and every set of promises, forming the consideration for each other, is an agreement;

2 (f)	Reciprocal Promises	Promises which form the consideration or part of the consideration for each other are called reciprocal promises. Reciprocal promises requires both the parties to the agreement to do something.
2 (g)	Void Agreement	An agreement not enforceable by law is said to be void;
2 (h)	Contract	An agreement enforceable by law is a contract;
2 (i)	Voidable Contract	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract. The contract will be void if the party having the option donot make it valid.
2 (j)	Void Contract	A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

Essential Elements of a Valid Contract:



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

(ii) Free Consent: All contracts need to be voluntary. According to Sec 14, 'Consent is said to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake. If consent is not free, then no valid contract comes into existence. This will be discussed in detail subsequently.

(iii) Lawful consideration: The agreement must be supported by a lawful consideration. Consideration means 'something in return'. 'Something in return' may be an act or abstinence. But it must be real and lawful. This will be discussed in detail subsequently.

(iv) Parties are competent: The parties to an agreement must be capable of entering into a contract. A person is considered competent if he is (a) eighteen years of age (b) of sound mind (c) not disqualified from contracting by any law to which he is subject. Existence of free consent implies the consent of the parties must be free and genuine i.e. not induced by coercion, undue influence, fraud or misrepresentation. This will be discussed in detail subsequently.

(v) Legality of object: There must be legality of object and consideration failing which it will not be a valid contract. This will be discussed in detail subsequently.

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

Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.

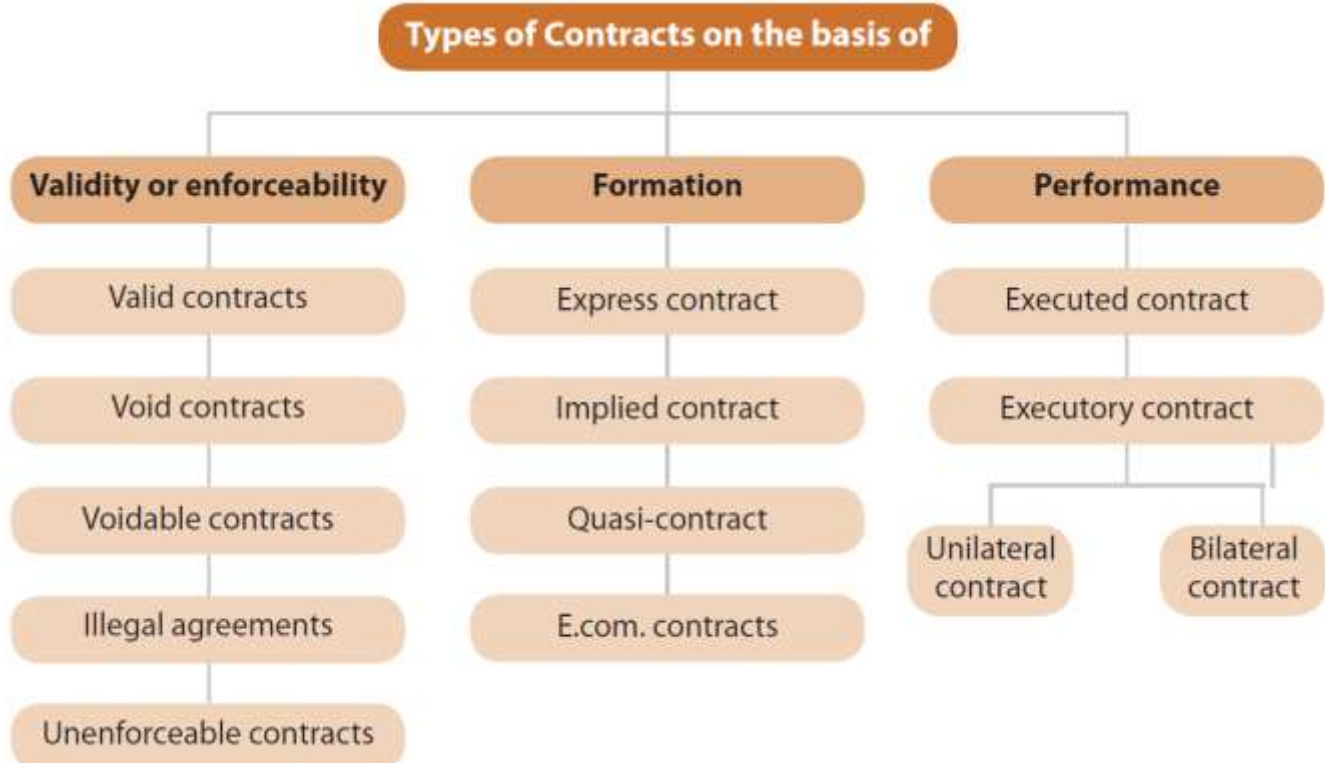
vii) Agreements not expressly declared to be void: The agreement not expressly declared void or illegal by law. This will be discussed in detail subsequently.

(ix) Certain and Capable of Performance: The terms of agreement must be **certain** and **capable of performance**.

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

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

Classification of Contracts:



I. On the basis of the validity

1. Valid Contract:

An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.

2. Void Contract: Section 2 (j) states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus a void contract is one which cannot be enforced by a court of law.

It may be added by way of clarification here that when a contract is void, it is not a contract at all but for the purpose of identifying it, it has to be called a [void] contract.

Example:

Mr. X agrees to write a book with a publisher. After few days, X dies in an accident. Here the contract becomes void due to the impossibility of performance of the contract.

Example:

A contracts with B (owner of the factory) for the supply of 10 tons of sugar, but before the supply is executed, the fire caught in the factory and everything was destroyed. Here the contract becomes void.

3. Voidable Contract:

Section 2(i) defines that "an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract"

This in fact means where one of the parties to the agreement is in a position or is legally entitled or authorized to avoid performing his part, then the agreement is treated and becomes voidable.

Such a right might arise from the fact that the contract may have been brought about by one of the parties by coercion, undue influence, fraud or misrepresentation and hence the other party has a right to treat it as a voidable contract.

4. Illegal Contract :

It is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All illegal agreements are void but all void agreements are not necessarily illegal.

Example:

Contract that is immoral or opposed to public policy are illegal in nature. Similarly, if R agrees with S, to purchase brown sugar, it is an illegal agreement.

According to Section 2(g) of the Indian Contract Act, "an agreement not enforceable by law is void". The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object and consideration of the contract i.e. illegality of the contract which makes it void.

5. Unenforceable Contract:

Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract.

II. On the basis of the formation of contract

1. Express Contracts: A contract would be an express contract if the terms are expressed by words or in writing. Section 9 of the Act provides that if a proposal or acceptance of any promise is made in words the promise is said to be express.

Example:

A tells B on telephone that he offers to sell his house for ` 2 lacs and B in reply informs A that he accepts the offers, this is an express contract.

2. Implied Contracts: Implied contracts in contrast come into existence by implication. Most often the implication is by law and or by action. Section 9 of the Act contemplates such implied contracts when it lays down that in so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Example: Where a coolie in uniform picks up the luggage of A to be carried out of the railway station without being asked by A and A allows him to do so, it is an implied contract and A must pay for the services of the coolie detailed by him.

3. Tacit Contracts:

The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written. A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].

Another example of tacit contract is where a contract is assumed to have been entered when a sale is given effect to at the fall of hammer in an auction sale. It is not a separate form of contract but falls within the scope of implied contract.

4. Quasi-Contract:

A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

Example:

Obligation of finder of lost goods to return them to the true owner or liability of person to whom money is paid under mistake to repay it back cannot be said to arise out of a contract even in its remotest sense, as there is neither offer and acceptance nor consent. These are said to be quasi-contracts.

5. E-Contracts:

When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through EDI - Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

III. On the basis of the performance of the contract

1. Executed Contract:

The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.

Example:

When a grocer sells a sugar on cash payment it is an executed contract because both the parties have done what they were to do under the contract.

2. Executory Contract:

In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

Example:

Where G agrees to take the tuition of H, a pre-engineering student, from the next month and H in consideration promises to pay G ` 1,000 per month, the contract is executory because it is yet to be carried out.

Unilateral or Bilateral are kinds of Executory Contracts and are not separate kinds.

(a) Unilateral Contract: Unilateral contract is a one sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding.

Example:

M advertises payment of reward of ` 5000 to any one who finds his missing boy and brings him. As soon as B traces the boy, there comes into existence an executed contract because B has performed his share of obligation and it remains for M to pay the amount of reward to B. This type of Executory contract is also called unilateral contract.

(b) Bilateral Contract: A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

Example:

A promises to sell his plot to B for ` 1 lacs cash down, but B pays only ` 25,000 as earnest money and promises to pay the balance on next Sunday. On the other hand A gives the possession of plot to B and promises to execute a sale deed on the receipt of the whole amount. The contract between the A and B is executory because there remains something to be done on both sides. Executory contracts are also known as Bilateral contracts.

(iii) Multilateral Contract: In this type of contract more than two parties are involved. These are very complex contracts and generally take international character.

Based on method of formation:

(i) Formal contracts: This term is usually found in English laws. Validity of these contracts depends upon their form. They are valid even if they lack consideration.

These contracts are of two types;

Contract under seal and contract of Records.

Contract under seal are in writing and signed by the parties to them.

Contract of Records includes the court judgements and recognizance, obligations in such cases arise out of judgement and not under the contract.

(ii) Simple Contract: All contracts other than formal are called simple contracts or parole contracts.

Meaning and Definition of Offer:

For an agreement to come into force, there should be a definite offer by one party and unqualified acceptance by the party to whom offer is made. Thus '**An offer is an expression of willingness to contract on certain terms, made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed, the "offeree".**

A proposal is defined as, '**when one person signifies to another his willingness to do or 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.**' [Sec 2(a)]

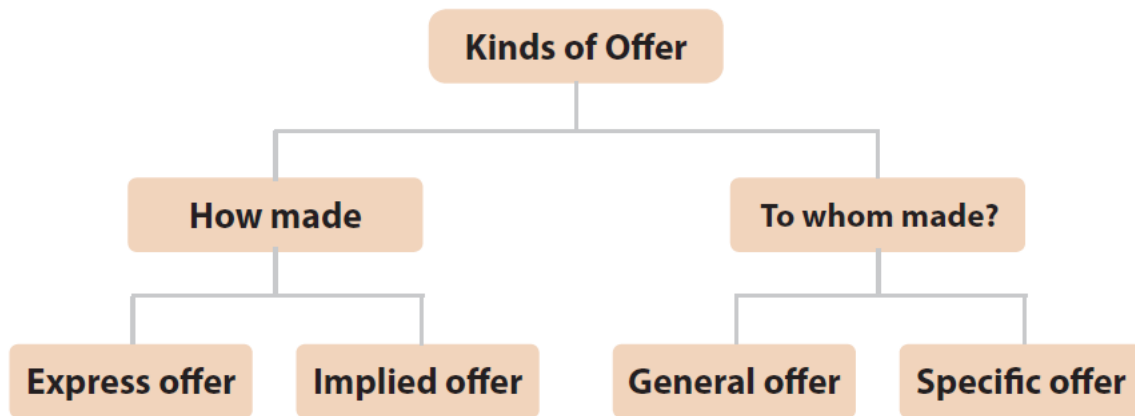
The term proposal used in the Indian Contract Act is like the term "offer" used in English laws. The person making proposal or offer is called the promisor or offeror and the person to whom offer is made is called the offeree and the person accepting the offer is called the promisee or acceptor. [Sec 2(c)]

Example:

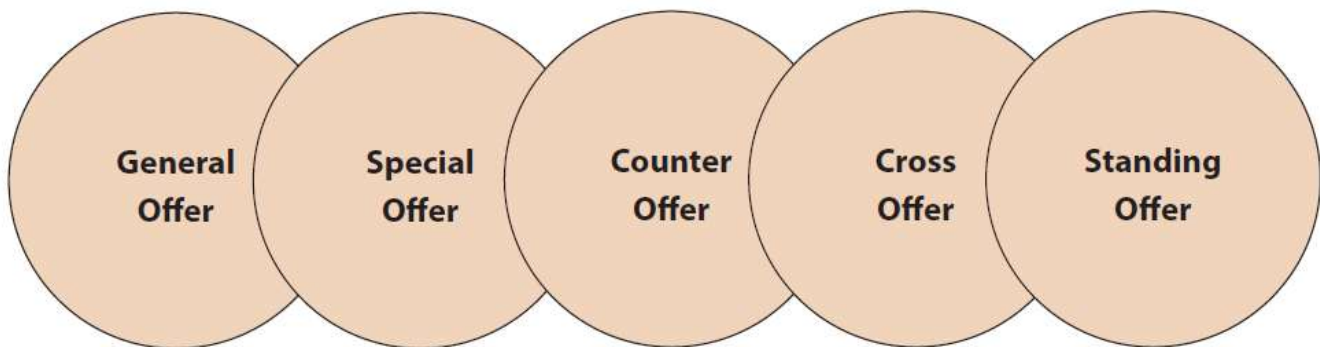
Where 'A' tells 'B' that he desires to marry by the end of 2017, it does not constitute an offer of marriage by 'A' to 'B'. Therefore, to constitute a valid offer expression of willingness must be made to obtain the assent (acceptance) of the other. Thus, if in the above example, 'A' further adds, 'Will you marry me', it will constitute an offer.

Example:

A offers to sell his car to B for ` 3 lacs is an act of doing. So in this case, A is making an offer to B. On the other hand, when A ask B after his car meets with an accident with B's scooter not to go to Court and he will pay the repair charges to B for the damage to B's scooter; it is an act of not doing or abstinence.



Classification of offer



(a) General offer:

It is an offer made to public at large and hence anyone can accept and do the desired act (Carlill v. Carbolic Smoke Ball Co.). In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer. Until the general offer is retracted or withdrawn, it can be accepted by anyone at any time as it is a continuing offer.

Case Law: Carlill Vs. Carbolic Smoke Ball Co. (1893)

Facts:

In this famous case Carbolic smoke Ball Co. advertised in several newspapers that a reward of £100 would be given to any person who contracted influenza after using the smoke balls produced by the Carbolic Smoke Company according to printed directions. One lady, Mrs. Carlill, used the smoke balls as per the directions of company and even then suffered from influenza. Held, she could recover the amount as by using the smoke balls she had accepted the offer.

(b) Special/specific offer:

When the offer is made to a specific or an ascertained person, it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made. [Boulton v. Jones]

Example:

'A' offers to sell his car to 'B' at a certain cost. This is a specific offer.

(c) Cross offer: When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called cross offers. There is no binding contract in such a case because offer made by a person cannot be construed as acceptance of the another's offer.

Example:

If A makes a proposal to B to sell his car for ` 2 lacs and B, without knowing the proposal of A, makes an offer to purchase the same car at ` 2 lacs from A, it is not an acceptance, as B was not aware of proposal made by A. It is only cross proposal (cross offer). And when two persons make offer to each other, it can not be treated as mutual acceptance. There is no binding contract in such a case.

(d) Counter offer: When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer. It is also called as Conditional Acceptance.

Example:

'A' offers to sell his plot to 'B' for ` 10 lakhs. 'B' agrees to buy it for ` 8 lakhs. It amounts to counter offer. It may result in the termination of the offer of 'A'. Any if later on 'B' agrees to buy the plot for ` 10 lakhs, 'A' may refuse.

(e) Standing or continuing or open offer:

An offer which is allowed to remain open for acceptance over a period of time is known as standing or continuing or open offer. Tenders that are invited for supply of goods is a kind of standing offer.

Legal Rules Regarding Offer:

An offer to be valid must comply with the following rules:

1. Offer may be expressed or implied:

An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

Express Offer: An express offer is made by words spoken or written.

Implied Offer: An implied offer is not made by words spoken or written. It is implied from the conduct of the parties or from the circumstances.

Example:

A boy starts cleaning the car as it stops on the traffic signal without being asked to do so, in such circumstances any reasonable man could guess that he expects to be paid for this, here boy makes an implied offer.

2. Offer may be specific or general:

A **specific offer** is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer. A **general offer** is an offer made to the public at large.

3. Offer must give rise to legal obligation:

An offer to be valid must create legal relationship between the parties. The very purpose of entering into an agreement is to make it enforceable at a Court of law.

4. Terms of an offer must be definite and certain:

The terms of an offer should not be vague or indefinite.

5. Offer must be distinguished from an invitation to offer:

In terms of Section 2(a) of the Act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.

An offer must be distinguished from an invitation to offer. The shopkeepers generally display their goods in showcases with price tags. The shopkeeper in such cases is not making an offer so that you can accept it. He is, on the other hand, inviting you to make an offer which he may or may not accept. Thus you cannot compel a shopkeeper to sell the goods displayed in the showcase at the marked price. However, if there is a specific law to sell goods at marked price then the seller will have to sell at marked price. For example, during National Emergency essential commodities like sugar etc. have to be sold at marked price.

Example:

An advertisement for sale of goods by auction is an invitation to the offer. It merely invites offers/bids made at the auction. Similarly, Red Herring Prospectus issued by a company, is only an invitation to the public to make an offer to subscribe to the securities of the company.

Example:

The price list of goods does not constitute an offer for sale of certain goods on the listed prices. It is an invitation to offer.

6. Offer must be communicated:

An offer must be communicated to the person to whom it is made. A person can accept the offer only when he knows about it. If he does not know it, he cannot accept it.

7. Communication of Special Terms:

Special terms of a contract must be communicated. Generally, such cases arise in respect of general offers, like tickets or receipts for depositing luggage at the Railway Station or receipts for clothes given for dry cleaning etc. The rule in these cases is that parties are not bound unless conditions printed are properly communicated. The special terms must be brought to the customer's notice either

(a) by drawing his attention to them specifically or

(b) by inferring that a man of ordinary prudence could find them by exercising ordinary prudence.

However, if the special conditions forming part of the offer are contained in a document which is delivered after the contract is complete. Then the customer is not bound by them.

8. Offer must be made with a view to obtaining the consent of the other party to do or to abstain

from doing the act:

The offer must be made with an intention to get the consent of the other party to do or to abstain from doing the act and not simply with a view to making known the intention of making an offer. Sometimes a

person declares that he has the intention to do something and this does not amount to an offer. Such a declaration only means that the offer will be made or invited in future.

9. Offer should not impose an unnecessary obligation to communicate non acceptance:

Thus an offeror cannot say that if acceptance is not communicated by Sunday next, the offer would be considered as accepted.

Example:

A proposes B to purchase his android mobile for ` 5000 and if no reply by him in a week, it would be assumed that B had accepted the proposal. This would not result into contract.

10. Offer to make an offer is not an offer.



ACCEPTANCE

Definition of Acceptance:

In terms of Section 2(b) of the Act, 'the term acceptance' is defined as follows:

"When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Essentials of a valid acceptance:

The following are the essentials of a valid acceptance. They are:

1. Acceptance must be absolute and unqualified: [Sec. 7(1)]

In order to be effective, there must be an absolute and unqualified acceptance of all the terms of the offer. Qualified acceptance would amount to rejection of the offer.

2. Acceptance must be communicated:

For an acceptance to be valid, it must not only be made by the offeree but must also be communicated by or with the authority of the offeree to the offeror. Acceptance must be communicated by the acceptor. In order to result in a contract it must be a 'matter of fact'. Silence cannot be construed as acceptance.

3. Acceptance must be in a prescribed or reasonable mode [Sec. 7(2)]

It should be in a prescribed or reasonable mode. [Sec. 7(2)] If the offer or prescribes no mode of acceptance, the acceptances must be communicated according to some usual and reasonable mode. The usual modes of communication are by words spoken or written or by conduct, it is called an implied acceptance.

Example:

If the offer or prescribes acceptance through messenger and offeree sends acceptance by email, there is no acceptance of the offer if the offeror informs the offeree that the acceptance is not according to the mode prescribed. But if the offeror fails to do so, it will be presumed that he has accepted the acceptance and a valid contract will arise.

4. Acceptance must be given within a reasonable time and before the offer lapses:

Acceptance must be given within the specified time limit, if any and if no time is stipulated, acceptance must be given within a reasonable time because an offer cannot be kept open indefinitely. Again the acceptance must be given before the offer is revoked or lapses by reason of offeree's knowledge of the death or insanity of the offeror. Acceptance given to a revoked offer is not valid.

5. Acceptance cannot precede an offer:

It cannot precede an offer. Acceptance must be given after receiving the offer. It should not precede the offer.

6. Acceptance must be given only by the person to whom the offer is made:

An offer can be accepted only by the person or persons to whom it is made and with whom it imports an intention to contract. It cannot be accepted by another person without the consent of the offeror.

7. Rejected offer can be accepted only on renewal:

Rejected offer can be accepted only, on renewal; offer once rejected can't be accepted again unless a fresh offer is made.

8. Revocation of acceptance:

Under English Law acceptance is revocable, whereas under Indian Law acceptance is irrevocable.

9. Acceptance to give an acceptance is not an acceptance.

10. Mere silence is not acceptance

The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

COMMUNICATION OF OFFER AND ACCEPTANCE

Communication of offer:

- ✚ In terms of Section 4 of the Act, "the communication of offer is complete when it comes to the knowledge of the person to whom it is made". This can be explained by an example.
- ✚ Where 'A' makes a proposal to 'B' by post to sell his house for ` 5 lakhs and if the letter containing the offer is posted on 10th March and if that letter reaches 'B' on 12th March the offer is said to have been communicated on 12th March when B received the letter.
- ✚ Thus it can be summed up that when a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.
- ✚ **Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.**
- ✚ He receives the letter on 12th March, but he reads it on 15th of March. In this case offer is communicated on 15th of March, and not 12th of March.

Communication of acceptance:

In terms of Section 4 of the Act, it is complete,

- (i) **As against the proposer, when it is put in the course of transmission to him so as to be out of the power of the acceptor to withdraw the same;**
- (ii) **As against the acceptor, when it comes to the knowledge of the proposer.**

Where a proposal is accepted by a letter sent by the post, the communication of acceptance will be complete as against the proposer when the letter of acceptance is posted and as against the acceptor when the letter reaches the proposer.

Revocation of offer and acceptance:

Revocation means taking back; revocation can be of both offer/proposal as well as acceptance.

Para 3 of section 4 states, "**the communication of a revocation is complete**"- against the person

- (i) **who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;**
- (ii) **as against the person to whom it is made, when it comes to his knowledge.**

Revocation means taking back or withdrawal of offer or acceptance. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

An acceptance may be revoked at any time before the communication of the acceptance, is complete as against the acceptor, but not afterwards.

Example

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post. A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards. B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

How is Revocation made: [Section 6]

Section 6 of the Act provides the modes for revocation of an offer or acceptance.

(i) By the communication of **notice of revocation** by the proposer to the other party. The offer or may revoke his proposal any time before the letter of acceptance is posted to him and not afterwards. Similarly acceptance can be revoked any time before the letter of acceptance is received by the offer or.

(ii) By the **lapse of the time** prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance; What is a reasonable time is a question of fact in each case.

(iii) By the **failure of the acceptor to fulfill a condition precedent** to acceptance. Suppose where 'A' proposes to sell his house to be 'B' for ` 5 lakhs provided 'B' leases his land to 'A'. If 'B' refuses to lease the land, the offer of 'A' is revoked automatically.

(iv) By the **death or insanity of the proposer**, if the fact of the death or insanity comes to the knowledge of the acceptor before acceptance. Where an offeree writes his acceptance but dies before posting, the offer lapse and posting of the letter after his death will not create a contract.

(v) If a **counter offer** is made to it. Where the offer is accepted with some modification in terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amounts to a counter offer.

(vi) If an offer **not accepted according to prescribed or usual mode**. However, the offeror gives notice to the offeree within the reasonable time that the acceptance is not according to the prescribed or usual mode of acceptance.

(vii) An offer comes to an end if the law is changed so as to make the contract contemplated by the offer **illegal or incapable of performance**

VOID AND VOIDABLE CONTRACT

An agreement becomes a contract when it fulfills all essential elements of a valid contract. In case one or more of the essential element of a valid contract are missing, the contract is void, voidable, illegal or unenforceable.

Let us discuss them one by one.

A. Voidable contract: An agreement which is enforceable by law at the option of one or more parties thereto but not at the option of other is a voidable contract. A contract become voidable when it is enforceable at the option of one or more party thereto but not other. How this happens? When in one of the essential element of a valid contract, free consent is absent.

Example: A promise to sell his farm to B for ` 5.0 lakh. B was not prepared for this but A by force compelled B to sign the agreement. Here the consent of B was obtained by coercion or fraud. The contract is voidable at the option of B.

B. Void agreement: An agreement not enforceable by law is said to be a void agreement. A void agreement does not create any legal rights or obligation, hence is null and void ab initio.

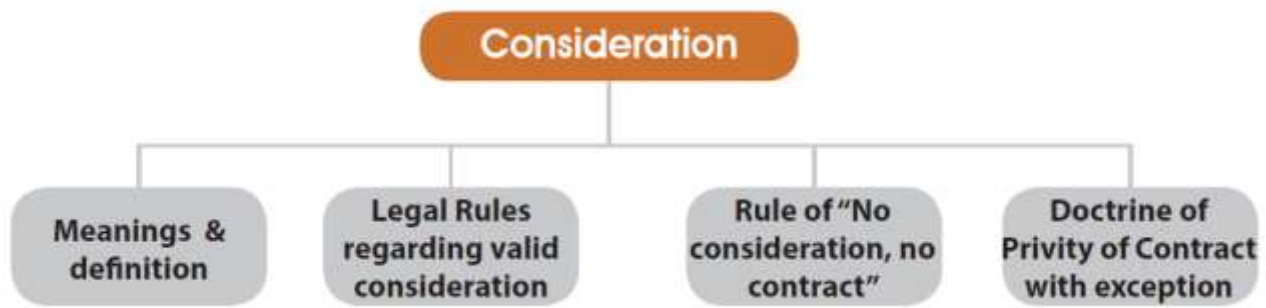
C. Void contract: A contract which ceases to be unenforceable by law becomes void when it ceases to be enforceable by law. Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.

The following agreements have been expressly declared to be void by the Indian Contract Act:

- 1) Agreement by a **minor or a person of unsound mind**. [Sec (11) and Sec (12)]
- 2) Agreement of which the **consideration or object is unlawful**. [Sec (23)]
- 3) Agreement made under a **bilateral mistake of fact material** to the agreement. [Sec (20)]
- 4) Agreement of which the **consideration or object is unlawful in part and the illegal part cannot be separated from the legal part**. [Sec (24)]
- 5) Agreement made **without consideration**. [Sec (25)]
- 6) Agreement in **restraint of marriage**. [Sec (26)] - Every agreement in restraint of the marriage of any person, other than a minor, is void.
- 7) Agreement **in restraint of trade**. [Sec (27)]- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The **exception** is an agreement not to carry on business of which **goodwill is sold**.
- 8) Agreement in **restraint of legal proceedings**. [Sec (28)]- Every agreement -
- 9) by which any party thereto is **restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights; or**

- 10) Which **extinguishes the rights of any party thereto, or discharges any party thereto from any liability, under or in respect of any contract on the expiry of a specified period so as to restrict any party from enforcing his rights**, is void to that extent.
- 11) Agreements the **meaning of which is uncertain**. [Sec (29)] - Agreements, the meaning of which is not certain, or capable of being made certain, are void.
- 12) Agreements by **way of wager**. [Sec (30)] - Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to a person to abide by the result of any game or other uncertain event on which any wager is made.
- 13) Agreements **contingent on impossible events**. [Sec(36)]
- 14) Agreements to do **impossible acts**. [Sec(56)] - According to section 56 an agreement to do impossible event is void. Impossibility may be at the time of entering into a contract or subsequent to the formation of the contract but before performance of the contract.
- 15) In case of **reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement** [Sec(57)]

CONSIDERATION



Consideration is an essential element of a valid contract without which no single promise will be enforceable. It is a term used in the sense of 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. The word consideration was described in a very popular English case of *Misa v. Currie* as:

"A valuable consideration in the sense of law may consist either in some **right, interest, profit or benefit accruing to one party (i.e. promisor) or forbearance, detriment, loss or responsibility** given, suffered or undertaken by the other (i.e., the promisee)."

Section 2(d) defines consideration as follows:

"**When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise**".

LEGAL RULES REGARDING CONSIDERATION

1. Consideration must move at the desire of the promisor:

It must move at the desire of the promisor. **Any act or abstinence at the desire of third party is not consideration.**

Example: X agrees to sell his horse to Y for ` 50,000. Here consideration for X selling horse to Y is consideration of ` 50,000 from Y and consideration for Y paying ` 50,000 to X, is X selling his horse. Here considerations had come at the desire of Promisor. X is a promisor for Y and similarly Y is a promisor for X.

An act done at the desire of a third party is not a consideration.

Example:

R saves S's goods from fire without being asked to do so. R cannot demand any reward for his services, as the act being done voluntary.

2. Consideration may move from the promisee or any other person:

Consideration may be furnished even by a stranger under Indian Law. Consideration can be from any direction, **even a stranger to contract can offer consideration.** Under English law consideration must move from promisee and no one else.

Example: An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the brother agreeing to pay annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter. [*Chinnayya vs. Ramayya (1882)*]

3. Consideration must be something of value:

Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. **Something in return need not be equal to something given.** It can be considered a bad bargain of the party.

4. It may be an act, abstinence or forbearance or a return promise:

Promise to not to smoke is a negative act (abstinence),

Promise to not to refer the matter to court (abstinence).

Promise to perform at the wedding anniversary or birthday party (promise to do).

5. It may be past, present or future which the promisor is already not bound to do:

According to Indian Law Consideration may be past, present or future. But under English Law Consideration may be present or future. Past consideration is no consideration according to English Law.

6. It must not be unlawful:

The consideration or object of an agreement is lawful, unless —

- It is forbidden by law;
- or is of such a nature that, if permitted, it would defeat the provisions of any law;
- or is fraudulent;
- or involves or implies injury to the person or property of another;
- or the Court regards it as immoral, or opposed to public policy

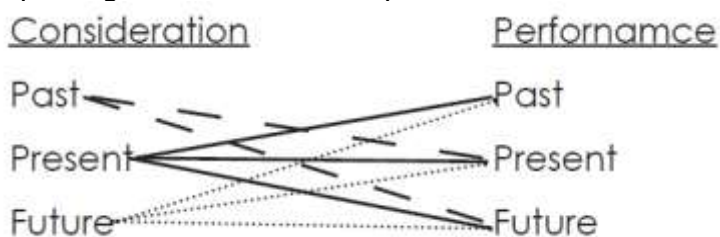
Types of Consideration

Consideration may be present, past or future.

(i) Past consideration is something wholly done or suffered before making the agreement.

(ii) Present consideration is basically an act, which has been done in response to a positive promise. It is also called executed consideration.

(iii) Executory or future consideration is when consideration is to move at a future date. Consideration, depending on time can be in any combination as mentioned below:



VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

The general rule is that an agreement made without consideration is void (Section 25). In every valid contract, consideration is very important. A contract may only be enforceable when consideration is there. However, the Indian Contract Act contains certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. Natural Love and Affection: Conditions to be fulfilled under section 25(1)

- (i) It must be made out of **natural love and affection** between the parties.
- (ii) Parties must stand in **near relationship** to each other.
- (iii) It must be in **writing**.
- (iv) It must also be **registered** under the law.

A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is **enforceable even without consideration**.

Example: A husband, by a registered agreement promised to pay his earnings to his wife. Held the agreement though without consideration, was valid.

2. Compensation for past voluntary services: A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Section 25(2). In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist:

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

Example: P finds R's purse and gives it to him. R promises to give P ` 10,000. This is a valid contract.

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

Example: A is indebted to C for ` 60,000 but the debt is barred by the Limitation Act. A signs a written promise now to pay ` 50,000 in final settlement of the debt. This is a contract without consideration, but enforceable.

4. Agency: According to Section 185 of the Indian Contract Act, 1872, **no consideration is necessary to create an agency.** Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration

5. Completed gift: Gifts once made cannot be recovered on the ground of absence of consideration. **Absence of consideration will not affect the validity of any gift already made.** Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration.

6. Bailment: No consideration is required to effect the contract of bailment (Section 148).

7. Charity: If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

8. Contract of guarantee:

Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.

9. Remission: Remission means lesser performance of the contract than what is actually to be performed.

SUIT BY A THIRD PARTY TO A CONTRACT

The doctrine of privity of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in **MC Chacko v State Bank of Travancore**. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law only a person who is party to a contract can sue upon it. In India the common law doctrine of privity of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privity of contract.

Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, **the third party cannot sue on contract.** Only a person who is party to a contract can sue on it.

Thus, **the concept of stranger to consideration is a valid and is different from stranger to a contract.**

Example: P who is indebted to Q, sells his property to R and R promises to pay of the debt amount to Q. If R fails to pay, then in such situation Q has no right to sue, as R is a stranger to contract.

The aforesaid rule, that **stranger to a contract cannot sue is known as a "doctrine of privity of contract"**, is however, subject to certain exceptions. In other words, even a stranger to a contract may enforce a claim in the following cases:

(1) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.

(2) In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.

(3) In the case of certain marriage contracts, a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.

(4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.

(5) Acknowledgement or estoppel - where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party. For example, if L gives to M ` 20,000 to be given to N, and M informs N that he is holding the money for him, but afterwards M refuses to pay the money. N will be entitled to recover the same from the former i.e. M.

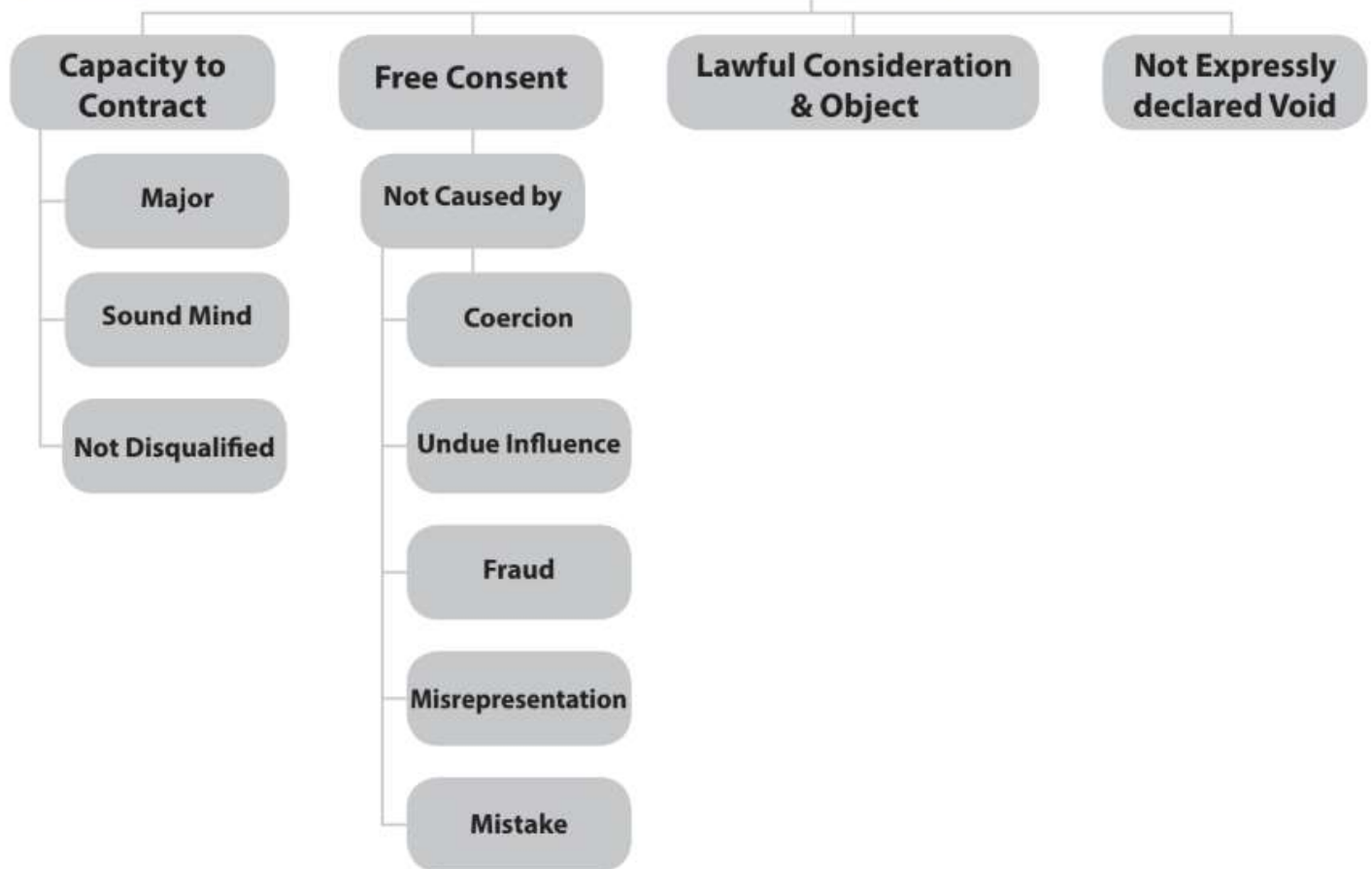
(6) In the case of covenant running with the land, the person who purchases land with notice that the owner of land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.

(7) Contracts entered into through an agent: The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

CAPACITY OF PARTIES, FREE CONSENT

UNIT
OVERVIEW 

Essential Elements
of a Valid Contract



OTHER ESSENTIAL ELEMENTS OF A CONTRACT

Meaning: Capacity refers to the competence of the parties to make a contract. It is one of the essential element to form a valid contract.

Who is competent to contract (Section 11)

"Every person is competent to contract who is of the **age of majority** according to the law to which he is subject, and who is of **sound mind** and is **not disqualified from contracting by any law** to which he is subject".

Analysis of Section 11

This section deals with personal capacity of three types of individuals only.

Every person is competent to contract who-

(A) has attained the age of majority,

(B) is of sound mind and

(C) is not disqualified from contracting by any law to which he is subject.

MINOR

As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age.

However in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years. (matlab 18 years ke pehle appoint hue toh 21 yrs mana jaiga majority)

The position of Minor's agreement and effect thereof is as under:

- 1) An agreement with a minor is void ab-initio.
- 2) A minor can always plead minority: A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor. It means he can be allowed to plea his minority in defense.
- 3) Doctrine of Restitution (right to recover the consideration) does not apply against a minor and no relief can be granted.
- 4) No Ratification on Attaining Majority. Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
- 5) Contract beneficial to Minor: A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
- 6) Minor as an agent: A minor can be appointed an agent, but he is not personally liable for any of his acts.
- 7) Minor's liability for necessities. If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable
- 8) A minor cannot be adjudged insolvent as he is incapable of entering into a contract.
- 9) Where a minor and an adult jointly enter into an agreement with another person the minor is not liable and the contract can be enforced against the major person.

SOUND MIND PERSON

Person of sound mind: According to section 12 of Indian Contract Act, "a person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it is capable of understanding it and of forming a rational judgement as to its effect upon his interests."

Unsound mind consist of :-

Lunatics

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

Idiots

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

Drunken or intoxicated persons

A drunken or intoxicated person suffers from temporary incapacity to contract, i.e. at the time when he is so drunk or intoxicated that he is incapable of forming a rational judgment. The position of a drunken or intoxicated person is similar to that of a lunatic.

examples

- (a) A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
- (b) A sane man, who is delirious from fever or who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interests, cannot contract whilst such delirium or drunkenness lasts.
- (c) Going by the spirit of the section it is clear that a person is of sound mind if he fulfills the following two conditions.
 - (i) He/she is capable of understanding the contract.
 - (ii) He/she is capable of forming a rational judgment about the effects of such contract on his interest.A person not satisfying any of these two conditions is not treated as a person of sound mind.

OTHER DISQUALIFIED PERSONS

The persons who are disqualified from entering into contract due to certain other reasons may be from legal status, political status or corporate status. Some of such categories of persons are given below:

- 1) **Alien Enemy**: An agreement with an Alien Enemy is void. But agreement with an Alien friend is perfectly valid and enforceable. When the Government of an Alien is at war with the Government of India, the alien is called Alien enemy who cannot enter into any contract with any Indian citizen without the permission of Government of India as the same is against the public policy. Contract entered into with an alien before war is put into suspension during the duration of war.
- 2) **Foreign Sovereign and Ambassadors**: Foreign sovereigns and their representatives enjoy certain privileges and immunities in every country. They cannot enter into contract except through their agents residing in India. They can sue the Indian citizen but an Indian citizen cannot sue them.
- 3) **Convicts**: A convict cannot enter into a contract while he is undergoing imprisonment.
- 4) **Insolvents**: An insolvent person is one who is unable to discharge his liabilities and therefore has applied for being adjudged insolvent or such proceedings have been initiated by any of his creditors. An insolvent person cannot enter into any contract relating to his property.
- 5) **Company or Statutory bodies**: A contract entered into by a corporate body or statutory body will be valid only to the extent it is within its Memorandum of Association and is entered into with authorized persons.
- 6) **Drunken or intoxicated person** cannot enter into valid contracts while such drunkenness lasts.

FREE CONSENT

Consent: 'Two or more persons are said to consent when they agree upon the same thing in the same sense.' - [Sec 13].

If the parties have not agreed upon the same thing in the same sense there is no real consent and hence no contract is formed.

As per section 14 of the Contract act consent is said to be free when it is not caused by—

- (1) Coercion (Sec 15), or
- (2) Undue influence (Sec 16), or
- (3) Fraud (Sec 17), or
- (4) Misrepresentation (Sec 18), or
- (5) Mistake, subject to provisions of Sec 20, 21 and 22.

COERCION: [Sec. 15]

The term coercion has been defined in section 15 of the Act as "Coercion" is the committing or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), or the unlawful detaining (Kabza karna), 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.

Explanation:

It is immaterial whether the Indian Penal Code (45 of 1860) is or is not in force in the place where the coercion is employed.

From the above definition of coercion given in section 15, consent is said to be caused by coercion when it is obtained by any one of the following;

- A. committing or threatening to commit any act forbidden by Indian Penal Code;
- B. unlawful detaining or threatening to detain the property of another person.
- C. Coercion may come from a person party to the contract or even third person not connected with the contract directly.

Unlawful detaining also amount to coercion: If a person unlawfully detains (Kabza karna) or give a threat to detain any property to the prejudice of any person whatever with the intention of causing any person to enter into an agreement amount to coercion.

Effect of coercion:

According to section 19 when the consent is caused by coercion, fraud, misrepresentation, the agreement is voidable at the option of the party whose consent was so caused. The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract he must restore the benefit so obtained under the contract from other party.

It should be noted that threat to commit suicide also amounts to coercion.

Some special cases which are prone to be construed cases of coercion are discussed as under;

1. **Prosecution:** A mere threat to prosecute a man or file suit against him does not constitute a coercion.

In the case of Andhra Sugar Ltd Vs State of AP AIR 1968 SC 599 it was held that compulsion of law is not a coercion, fraud, misrepresentation, mistake or even undue-influence.

2. **High prices and high interest Rates:** Charging high interest rate, high price etc is not a coercion as the same is not prohibited under the Indian Penal code.

3. **A threat to commit suicide:** Consent to an agreement may at times be obtained by threatening to commit suicide. The Madras High court has held that threat to commit suicide amounts to coercion. In Amraju v Seshamma 1917 41 Mad 33 it was argued by Oldfield J one of the judge of the Bench which

decided this case, that section 15 of the Contract Act must be construed strictly and that an act which is not punishable under the Indian Penal Code cannot be said to be forbidden by it. Suicide is not punishable by the Indian Penal Code, only the attempt to suicide is punishable.

UNDUE INFLUENCE: [Sec. 16]

Section 16 of the Indian Contract Act defines undue influence as under:

- (i) 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.
- (ii) In particular and without prejudice to the generality of the forgoing principle, a person is deemed to be in a position to dominate the will of another—
- Where he holds a **real or apparent authority** over the other, or where he stands in a **fiduciary relation** to the other; or
 - Where he makes a contract with a person whose **mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress**.
- (iii) Where a person, who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that **such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other**.

Nothing in this sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872).

There is presumption of undue influence in the following relationships:

- Parent and child
- Guardian and ward
- Doctor and patient
- Solicitor and client
- Trustee and beneficiary
- Religious advisor and disciple
- Fiancé and fiancée

There is however no presumption of undue influence in case of relationship of —

- landlord and tenant
- debtor and creditor
- husband and wife.

The wife has to be pardanashin for such presumption. In these relationships undue influence has to be proved.

Going through the definition of undue influence in section 16 we find that two elements are found in undue influence:

- The relationship subsisting between the parties is such that **one is in a position to dominate the will of other** and
- He uses that position to obtain an unfair advantage over the other**. The person intending to avoid the contract on the ground of undue influence must prove both the above two elements.

Effect of undue influence: Section 19A provides that when the consent is caused by undue influence, **the agreement is avoidable at the option of the party whose consent was so caused**.

The aggrieved party may opt to rescind the contract. If the aggrieved party seeks to rescind the contract **he must restore the benefit so obtained under the contract from other party**, upon such

terms and conditions as to the court may seem just.

The following illustrations are appended to the section.

(a) A's son has forged B's name to a promissory note. B, under threat of prosecuting A's son, obtains a bond from A for the amount of the forged note. If B sues on this bond, the Court may set the bond aside.

(b) A, a moneylender, advances ` 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for ` 200 with interest at 6 per cent per month. The Court may set the bond aside; ordering B to repay ` 100 with such interest as may seem just.

The court has discretion to direct the aggrieved party for giving back the benefit whether in whole or in part or set aside the contract without any direction for refund of benefit.

FRAUD: [Sec. 17]

As per section 17 of the Contract Act:

"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:

- (i) The suggestion, as a **fact**, of that **which is not true** by one who does not believe it to be true;
- (ii) The **active concealment of a fact** by one having knowledge or belief of the fact;
- (iii) A **promise made without any intention of performing it**;
- (iv) Any other **act fitted to deceive**;
- (v) Any **such act or omission as the law specially declares to be fraudulent**.

Explanation to Section 17

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence is, in itself, equivalent to speech.

Example 1:

A sells, by auction, to B, a horse which A knows to be unsound, A says nothing to B about the unsoundness of the horse. This is not fraud by A.

Example 2:

B is A's daughter and has just come of age. Here, the relation between the parties would make it A's duty to tell B if the horse is unsound.

Example 3:

B says to A "If you do not deny it, I shall assume that the horse is sound". A says nothing. Here A's silence is equivalent to speech.

Example 4:

A and B being traders, enter into a contract. A has private information of a change in prices which would affect B's willingness to proceed with the contract. A is not bound to inform B.

Analysis of Section 17

The following are the essential elements of the fraud:

- (1) There must be a representation or assertion and it must be false. However, silence may amount to fraud or an active concealment may amount to fraud.
- (2) The representation must be related to a fact.
- (3) The representation should be made before the conclusion of the contract with the intention to induce the other party to act upon it.
- (4) The representation or statement should be made with a knowledge of its falsity or without belief in its truth or recklessly not caring whether it is true or false.
- (5) The other party must have been induced to act upon the representation or assertion.
- (6) The other party must have relied upon the representation and must have been deceived.
- (7) The other party acting on the representation must have consequently suffered a loss.

Effect of Fraud upon validity of a contract: When the consent to an agreement is caused by the fraud, the contract is voidable at option of the party defrauded and he has the following remedies:

- (1) He can rescind the contract within a reasonable time.
- (2) He can sue for damages.
- (3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

Mere silence is not fraud

A party to the contract is under no obligation to disclose the whole truth to the other party. 'Caveat Emptor' i.e. let the purchaser beware is the rule applicable to contracts. There is no duty to speak in such cases and silence does not amount to fraud. Similarly there is no duty to disclose facts which are within the knowledge of both the parties.

Example: H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W. Held there was no fraud. [*Word vs. Hobbs. (1878)*].

Silence is fraud:

1. Duty of person to speak: Where the circumstances of the case are such that it is the duty of the person observing silence to speak. For example, in contracts of *uberrimae fidei* (contracts of utmost good faith).

Following contracts come within this category:

(a) Fiduciary Relationship: Here, the person in whom confidence is reposed is under a duty to act with utmost good faith and make full disclosure of all material facts concerning the agreement, known to him.

Example: A broker was asked to buy shares for client. He sold his own shares without disclosing this fact. The client was entitled to avoid the contract or affirm it with a right to claim secret profit made by broker on the transaction since the relationship between the broker and the client was relationship of utmost good faith.

(b) Contracts of Insurance: In contracts of marine, fire and life insurance, there is an implied condition that full disclosure of material facts shall be made, otherwise the insurer is entitled to avoid the contract.

(c) Contracts of marriage: Every material fact must be disclosed by the parties to a contract of Marriage.

(d) Contracts of family settlement: These contracts also require full disclosure of material facts within the knowledge of the parties.

(e) Share Allotment contracts: Persons issuing 'Prospectus' at the time of public issue of shares/ debentures by a joint stock company have to disclose all material facts within their knowledge.

2. Where the silence itself is equivalent to speech: For example, A says to B "If you do not deny it, I shall assume that the horse is sound." A says nothing. His silence amounts to speech.

In case of fraudulent silence, contract is not voidable if the party whose consent was so obtained had the means of discovering the truth with ordinary diligence (Exception to section 19)

MISREPRESENTATION: [Sec. 18]

A statement of fact which one party makes in the course of negotiation with a view to inducing the other party to enter into a contract is known as misrepresentation. It must relate to **some fact which is material to the contract**. It may be expressed by words spoken or written or implied from the acts and conduct of the parties.

A representation when wrongly made either innocently or intentionally is a misrepresentation.

When it is made **innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud**.

Misrepresentation has been defined in **section 18** of the Act as under:

"Misrepresentation" means and includes—

- (1) The positive assertion, in a manner not warranted by the **information** of the person making it, of that which is not true, though **he believes it to be true;**
- (2) Any breach of duty which, **without an intent to deceive**, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him ;
- (3) Causing, however **innocently**, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement. From the above definition of the term Misrepresentation, the following two types of misrepresentations are noticed.

Unwarranted statements: When a person positively asserts, makes an absolute and explicit statement of facts, that fact is true, though he has no reliable source to form this opinion, but he believe it to be true. This is one type of misrepresentation.

Breach of duty: Any breach of duty which brings advantages to the person committing it by misleading the other to his prejudice is a misrepresentation.

Effect of Misrepresentation:

As per section 19 when consent to an agreement is caused by misrepresentation, the agreement is a contract avoidable at the option of the party whose consent was so caused. A party to a contract, whose consent was caused by 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**. This is also called 'doctrine of constructive notice'.

MISTAKE: [Sec. 20, 21 and 22]

Mistake means an erroneous belief about something. It has not been defined in the Indian Contract Act.

Mistake can be -

- (A) Mistake of law, or
- (B) Mistake of fact

(A) Mistake of law may be:

- (i) Mistake of law of the country
- (ii) Mistake of law of a foreign country

(i) Mistake of law of the country:

When a party enters into a contract, without the knowledge of law in the country, the contract is affected by such mistake but it is not void. A contract is not voidable because it was caused by a mistake as to any law in force in India. The reason here is that ignorance of law is not an excuse at all. However if a party is induced to enter into a contract by the mistake of law then such a contract may be avoided. The principle of ignorance of law is not an excuse.

(ii) Mistake of law of foreign country: Such a mistake is treated as mistake of fact and agreement in such case is void. Ignorance of foreign law may be excused.

(B) Mistake of fact may be:

- (I) a bilateral mistake, or
- (II) unilateral mistake

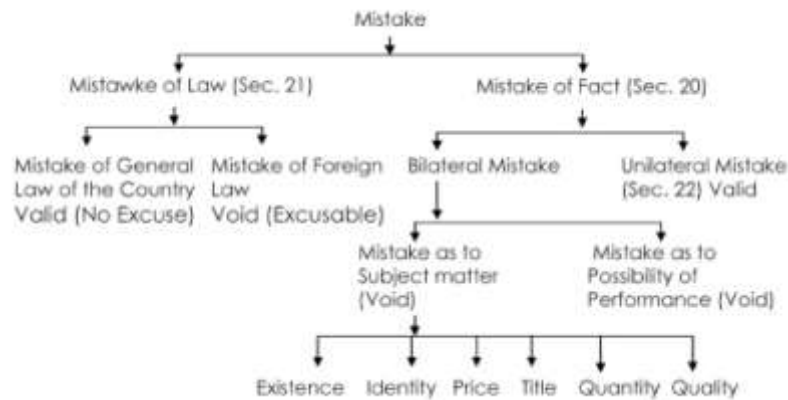
(I) Bilateral mistake

Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

Explanation: An erroneous opinion as to the value of the thing which forms the subject-matter of the agreement is not to be deemed a mistake as to a matter of fact.

In order to render a contract void due to bilateral mistake the following two conditions must be met.

- (a) **Mistake must be mutual:** Both the parties must misunderstand each other and should be at cross purpose.
- (b) **Mistake must relate to a matter of fact essential to the agreement:** What is essential fact of an agreement depends upon the nature of promise in each case.



The various types of mistakes falling under bilateral mistakes are as under:

(i) Mistake as to subject matter covers following cases:

(a) Mistake as to **existence** of subject matter: If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.

(b) Mistake as to **identity** of subject matter: It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.

(c) Mistake as to the **quality** of the subject matter: If the subject matter is something essentially different from what the parties thought to be, the agreement is void.

(d) Mistake as to **quantity** of subject matter: Bilateral mistake as to quantity of subject matter would render the contract void.

(e) Mistake as to **title** of subject matter: The agreement is void due to bilateral mistake as to title of the subject matter.

(f) Mistake as to **price** of the subject matter: Mutual mistake as to price of the subject matter would render the agreement void.

(ii) Mistake as to possibility of performance of Contract. Impossibility may be:

(a) **Physical impossibility:** A contract is void if it is identified to be non-feasible due to physical factors, like time, distance, height, etc.

(b) **Legal impossibility:** A contract is void if it provides that something shall be done which as a matter of law cannot be done.

(II) Unilateral Mistake as to fact:

As per section 22 a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A unilateral mistake is not allowed as a defense in avoiding a contract unless the mistakes brought about by another party's fraud or misrepresentation.

QUASI CONTRACT, CONTINGENT CONTRACT

Under certain circumstances, the law creates and enforces legal rights and obligations although the parties have never entered into a contract. Such obligations imposed or created by law are known as "Quasi-Contracts". In other words, Contracts constituted by law are known as Quasi- Contracts. In other words, relationship in nature of a contract is also a quasi contract. The Indian Contract Act describes them as "certain relations resembling those created by contracts". In English law, they are referred to as "implied contracts or constructive contracts".

Quasi-contracts are based on the principles of equity and justice. The claim based on a quasi contracts is generally for money. The remedy in quasi-contracts is only compensation and not damages.

Example:

A delivers goods to B mistaking him to be C, and B consumes them. B is bound to pay compensation to A for the value of goods. Law imposes such a duty on B. This is a quasi-contract.

Example: A pays some money to B by mistake. It is really due to C. B must refund the money to A.

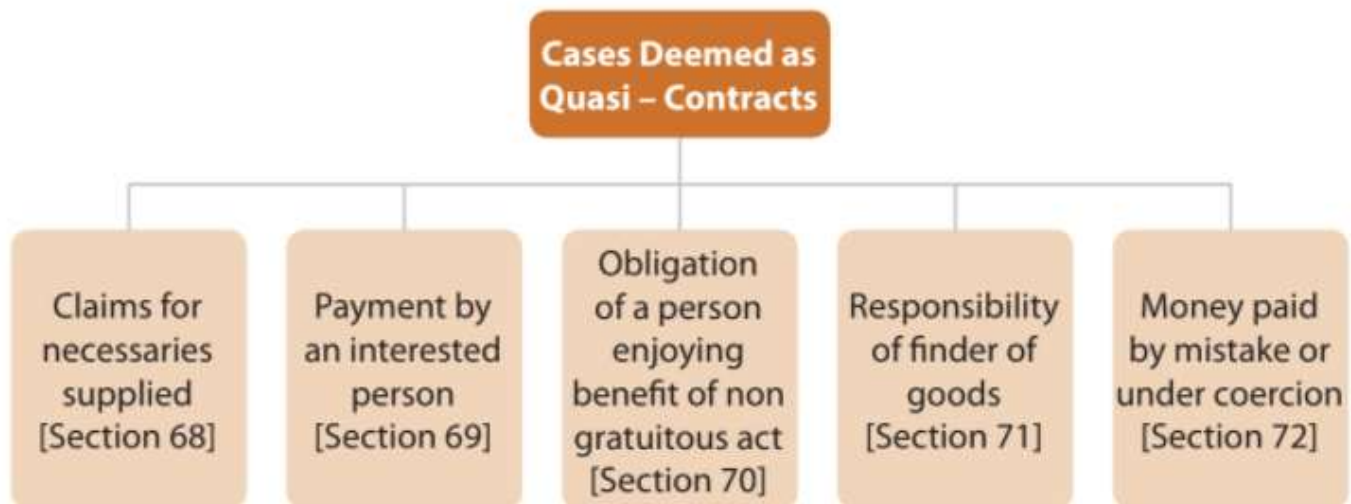
Example: A fruit parcel is delivered under a mistake to R who consumes the fruits thinking them as birthday present. R must return the parcel or pay for the fruits. Although there is no agreement between R and the true owner, yet he is bound to pay as the law regards it a Quasi-contract.

Features of a Quasi Contract:

The salient features of a quasi contract are as under:

1. It is imposed by law and does not arise by agreement.
2. The duty of a party and not the promise of any party is the basis of such contract.
3. The right under it is always a right to money and though not always to a liquidated sum of money.
4. The right is available against specific persons and not the whole world.
5. A suit for breach may be filed in the same way as in case of a complete contract.

Types of Quasi-Contracts:



1. Claims for necessities supplied:

Where necessities are supplied to a person who is incompetent to contract, **the supplier is entitled to recover the price from the property of the incompetent person** under section 68 of the Indian Contract Act.

Example:

A supplies B, a minor, with necessities suitable to his condition in life. A is entitled to be reimbursed from B's property.

2. Payment by an interested person:

Section 69 provides that a person who is interested in the payment of money of which another is bound by law to pay, and who therefore, pays it, is **entitled to be reimbursed by the other**".

In order to apply section 69, the following conditions must be satisfied.

- a. The payment made should be bonafide for the protection of one's interest.
- b. The payment should not have been made gratuitously or voluntarily.
- c. Another person must be bound by law to pay.
- d. The payment must be made to a third party and not to himself.

Example: B holds land in Bengal, on a lease granted by A, the zamindar. The revenue payable by A to the Government being in arrear, his land is advertised for sale by the Government. Under the revenue law, the consequence of the sale will be the annulment of B's lease. B, to prevent the sale and the consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.

3. Benefits of non-gratuitous act:

Section 70 deal with the obligation of a person enjoying benefit of a non-gratuitous act. When a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, such person who enjoys the benefit must reimburse the former or must restore to him the thing so delivered.

For the application of section 70, the following conditions must be fulfilled.

- a. The act must have been done lawfully.
- b. It must have been done by the person not intending to act gratuitously, i.e., without any consideration.
- c. The person for whom the act is done must have enjoyed the benefit of that act.

Example: A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them.

4. Responsibility of finder of goods:

A person who finds goods belonging to another and takes them into his custody is liable as a bailee. The finder of goods must try to find out the real owner of the goods and deliver the goods to him on demand. The obligations are imposed on finder of goods by Section 71 of the Indian Contract Act.

Example: 'P' a customer in 'D's shop puts down a brooch worn on her coat and forgets to pick it up and one of 'D's assistants finds it and puts it in a drawer over the weekend. On Monday, it was discovered to be missing. 'D' was held to be liable in the absence of ordinary care which a prudent

man would have taken.

5. Money paid by mistake or under coercion:

According to section 72, a person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Example: A and B jointly owe ` 100 to C. A alone pays the amount to C, and B, not knowing this fact, later on also pays ` 100 to C. C is bound to repay the amount to B.

Distinction between Quasi Contracts and Contracts:

Basis	Quasi Contracts	Contracts
Essential elements for formation of contracts.	The essential elements for formation of contracts are absent.	Essential elements for formation of contracts are present.
Obligation.	Obligation is imposed by law.	Obligation is created by consent of parties.

Contingent Contracts:

A contract may be an absolute contract or a contingent contract. An absolute contract is one where the promisor undertakes to perform the contract in all events without any conditions. Hence, it is also known as 'unconditional contract'. **A contingent contract is also called 'conditional contract'. It is a contract in which the performance becomes due, only upon the happening of some event, which may or may not happen. Contracts of insurance, indemnity and guarantee are good examples of contingent contracts.**

Section 31 of the Indian Contract Act, defines a contingent contract as "a contract to do or not to do something if some event, collateral to such contract, does or does not happen".

Example: A contracts to pay B ` 50,000 if B's house is burnt. This is a contingent contract.

Essentials of Contingent Contract:

The following are the essentials of a contingent contract. They are:

1. There must be a contract to do or not to do something.
2. The performance of the contract depends upon the happening or non-happening of some event in future.
3. The event must be uncertain.
4. The event must be collateral or incidental to the contract.

Rules regarding contingent contract:

Rules regarding contingent contracts are contained in section 32 to 36 of the Indian Contract Act. They are as follows:

1. Enforcement of contracts contingent on an event happening [Sec. 32]
2. Enforcement of contracts contingent on an event not happening [Sec. 33]
3. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (Sec. 34)
4. When contracts become void which are contingent on happening of specified event within fixed time (Sec. 35)
5. Agreements contingent on impossible events void [Sec. 36]
6. The happening of the event is not under the will/intention of either of the parties.

1. Enforcement of contracts contingent on an event happening: [Sec. 32]

Contracts, contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Example: A contracts to pay B a sum of money when B marries C. C dies without being married to B. The contract becomes void.

2. Enforcement of contracts contingent on an event not happening: [Sec. 33]

Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible.

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

3. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person (Sec. 34)

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

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

4. When contracts become void which are contingent on happening of specified event within fixed time (Sec. 35)

Contingent contracts to do or not to do anything if a specified uncertain event happens within a fixed time become void if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.

When contracts may be enforced which are contingent on specified event not happening within fixed time —

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

Examples:

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

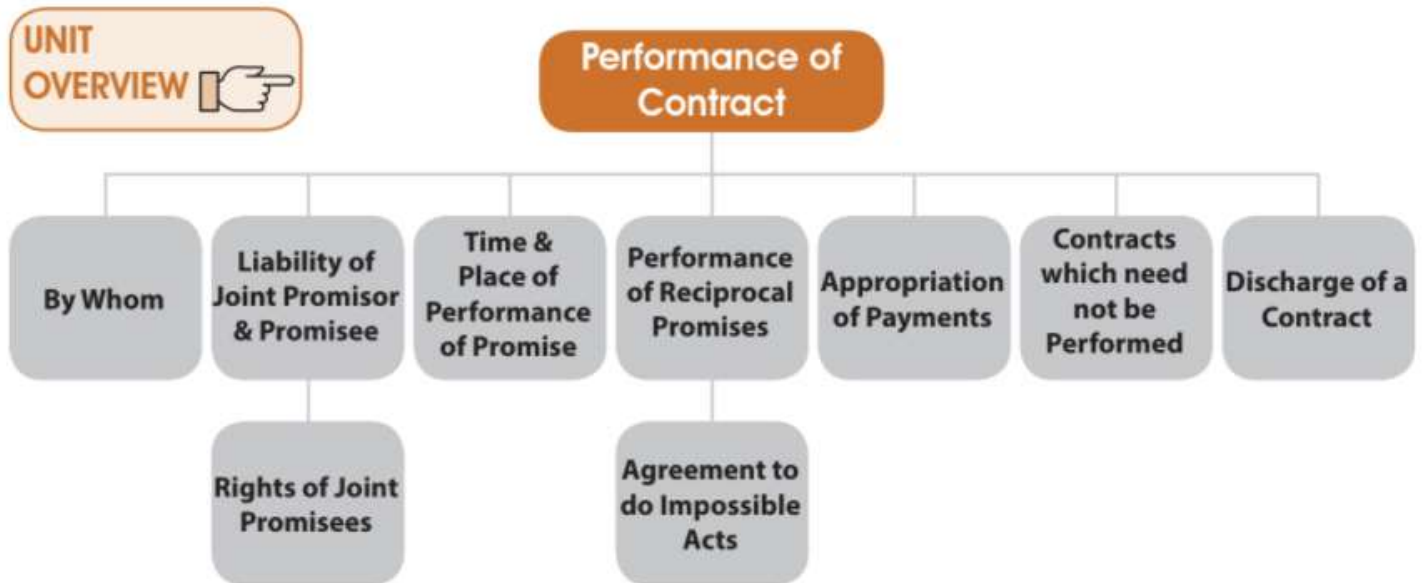
5. Agreements contingent on impossible events void [Sec. 36]

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

Illustrations

- a) A agrees to pay B ` 1,000 if two-straight lines should enclose a space. The agreement is void.
- b) A agrees to pay B ` 1,000 if B will marry A's daughter C. C was dead at the time of the agreement. The agreement is void
- c) 'A' agrees to pay 'B' ` one lakh if sun rises in the west next morning. This is an impossible event and hence void.

PERFORMANCE OF CONTRACTS



Every Contract creates certain obligation on each of the parties involved in it. When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed. When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance.

Obligation of Parties to Contracts (Section 37)

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 promisor in case of the death of such promisor before performance, unless a contrary intention appears from the contract.

Examples:

(a) A promises to deliver goods to B on a certain day on payment of ` 1,000. A dies before that day. A's representatives are bound to deliver the goods to B, and B is bound to pay ` 1,000 to A's representatives.

(b) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract cannot be enforced either by A's representatives or by B.

Effect of Refusal to accept offer of performance (Section 38)

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.**

Every such offer must fulfill the following conditions :

(i) it must **be unconditional**

(ii) it must be made at a **proper time and place**, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by

whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do.

(iii) if the offer is an offer to deliver anything to the promisee, the **promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.**

Example:

A contracts to deliver to B at his warehouse, on the 1st March, 2014, 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.

Effect of Refusal of Party to Perform Promise Wholly (Section 39)

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, by words or conduct, his acquiescence(acceptance) in its continuance.**

Example:

A, a singer, enters into a contract with B, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and B engages to pay her 100 rupees for each night's performance. On the sixth night A willfully absents herself from the theatre. B is at liberty to put an end to the contract.

Person by whom promise is to be performed (Section 40)

If it appears from the nature of the case that it was **the intention of the parties** to any contract that any promise contained in it should be performed by the **promisor himself**, such promise must be performed by the promisor. **In other cases, the promisor or his representatives may employ a competent person to perform it.**

Example:

A promises to pay B a sum of money. A may perform this promise, either by personally paying the money to B or by causing it to be paid to B by another; and, if A dies before the time appointed for payment, his representatives must perform the promise, or employ some proper person to do so.

Effect of accepting performance from third person (Section 41)

When a promisee accepts performance of the promise from a third person, **he cannot afterwards enforce it against the promisor.**

Devolution of Joint Liabilities (Section 42)

When two or more persons have made a joint promise then, unless a contrary intention appears by the contract, **all such persons**, during their joint lives, and after the death of any of them, his representative jointly with the survivor, or survivors, and after the death of the last survivor, the **representatives of all jointly**, must fulfill the promise.

Any one of Joint Promisors may be compelled to perform (Section 43)

When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel(force) any one or more of such joint promisors to perform the whole of the promise.

Each promisor may compel contribution- Each of two or more joint promisors may compel every other joint promisor to **contribute equally** with himself to the performance of the promise, unless a contrary intention appears from the contract.

Sharing of loss by default in contribution- If any one of two or more joint promisors makes default in such contribution, **the remaining joint promisors must bear the loss arising from such default in equal shares.**

Explanation : Nothing in this section shall prevent(stop) a surety from recovering from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

Examples:

- (a) A, B and C jointly promise to pay D ` 3,000. D may compel either A or B or C to pay him ` 3,000.
- (b) A, B and C jointly promise to pay D the sum of ` 3,000. C is compelled to pay the whole. A is insolvent, but his assets are sufficient to pay one-half of his debts, C is entitled to receive ` 500 from A's estate, and ` 1,250 from B.
- (c) A, B and C are under a joint promise to pay D ` 3,000. C is unable to pay anything, and A is compelled to pay the whole. A is entitled to receive ` 1,500 from B.
- (d) A, B and C are under a joint promise to pay D ` 3,000, A and B being only sureties for C. C fails to pay. A and B are compelled to pay the whole sum. They are entitled to recover it from C.

Effect to release of one Joint Promisor (Section 44)

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

Example: 'A', 'B' and 'C' jointly promised to pay ` 9,00,000 to 'D'. 'D' released 'A' from liability. In this case, the release of 'A' does not discharge 'B' and 'C' from their liability. They remain liable to pay the entire amount of ` 9,00,000 to 'D'. And though 'A' is not liable to pay to 'D', but he remains liable to pay to 'B' and 'C' i.e. he is liable to make the contribution to the other joint promisors.

Devolution of Joint Rights (Section 45)

When a person has made a promise to two or more persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any of them, with the representative of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly.

Example:

A, in consideration of ` 5,000, lent to him by B and C, promises B and C jointly to repay them that sum with interest on a day specified. B dies. The right to claim performance rests with B's representative jointly with C during C's life, and after the death of C with the representatives of B and C jointly.

Time and Place of Performance [Sec. 46 - 50]

The time and place of performance of a contract are determined by an agreement between the parties. The rules regarding time and place of performance are summarized below :

Time for Performance of Promise, where no application is to be made and no time is specified (Section 46)

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. Reasonable time would depend on the nature of contract. In case of dispute, court will decide reasonable time.

Time and Place for Performance of Promise, where time is specified and no application to be made (Section 47)

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Example:

A promises to deliver goods at B's warehouse on the 1st January. On that day A brings the goods to B's warehouse, but after the usual hour for closing it, and they are not received. A has not performed his promise.

Application for Performance on certain day to be at proper time and place (Section 48)

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for performance at a proper place and within the usual hours of business.

Place for Performance of Promise, where no application to be made and no place fixed for performance (Section 49)

When a promise is to be performed without application by the promisee, and no place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such place.

Example:

A undertakes to deliver a thousand mounds of jute to B on a fixed day. A must apply to B to appoint a reasonable place for the purpose of receiving it, and must deliver it to him at such place.

Performance in Manner or at time prescribed or Sanctioned by Promisee (Section 50)

The performance of any promise may be made in any manner, or at any time which the promise prescribes or sanctions.

Example:

B owes A ` 2,000. A desires B to pay the amount to A's account with C, a banker. B, who also banks

with C, orders the amount to be transferred from his account to A's credit, and this is done by C. Afterwards, and before A knows of the transfer, C fails. There has been a good payment by B.

Performance of Reciprocal Promises [Sec. 51 - 54 and 57]

There are situations where in a single contract there may be multiple promises and both the parties need to perform with a sequence.

Promisor not bound to perform unless reciprocal promisee ready and willing to perform (Section 51)

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Example:

A and B contract that A shall deliver goods to B to be paid for by B on delivery. A need not deliver the goods, unless B is ready and willing to pay for the goods on delivery. B need not pay for the goods, unless A is ready and willing to deliver them on payment.

Order of Performance of Reciprocal Promises (Section 52)

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order; and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Example:

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's promise to pay for it.

Liability of party preventing event on which the contract is to take effect (Section 53)

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

Example:

A and B contract that B shall execute certain work for A for a thousand rupees. B is ready and willing to execute the work accordingly, but A prevents him from doing so. The contract is voidable at the option of B; and, if he elects to rescind it, he is entitled to recover from A compensation for any loss which he has incurred by its non-performance.

Effect of default as to that promise which should be first performed, in contract consisting of Reciprocal Promises (Section 54)

When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promiser of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

Example:

A contracts with B to execute certain builder's work for a fixed price, B supplying the scaffolding and timber necessary for the work. B refuses to furnish scaffolding or timber, and the work cannot

be executed. A need not execute the work, and B is bound to make compensation to A for any loss caused to him by the non-performance of the contract.

Reciprocal Promises to do things legal, and also other things illegal (Section 57)

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

Time is Essence of the Contract (Section 55)

When a party to a contract promises to do a certain thing at or before a specified time, or certain things at or before specified times, and fails to do any such thing at or before the specified time, the contract, or so much of it as has not been performed, becomes **voidable at the option of the promisee**, if the intention of the parties was that **time should be of the essence of the contract**.

Effect of such failure when time is not essential — If it was not the intention of the parties that time should be of the essence of the contract, the contract does **not become voidable** by the failure to do such thing at or before the specified time; but the promisee is **entitled to compensation** from the promisor for any loss occasioned to him by such failure.

Effect of acceptance of performance at time other than that agreed upon — If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the **promisee accepts performance of such promise at any time other than that agreed**, the promisee **cannot claim compensation for any loss** occasioned by the non-performance of the promise at the time agreed, **unless, at the time of such acceptance, he gives notice to the promisor of his intention to do so**.

Appropriation of Payments:

Application of Payment where debt to be discharged is indicated (Section 59)

Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

Illustrations

- (a) A owes B, among other debts, ` 1,000 upon a promissory note which falls due on the first June. He owes B no other debt of that amount. On the first June A pays to B ` 1,000. The payment is to be applied to the discharge of the promissory note.
- (b) A owes to B, among other debts, the sum of ` 567. B writes to A and demands payment of this sum. A sends to B ` 567. This payment is to be applied to the discharge of the debt of which B had demanded payment.

Application of payment where debt to be discharged is not indicated (Section 60)

Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitation of suits.

Application of Payment where neither party appropriates (Section 61)

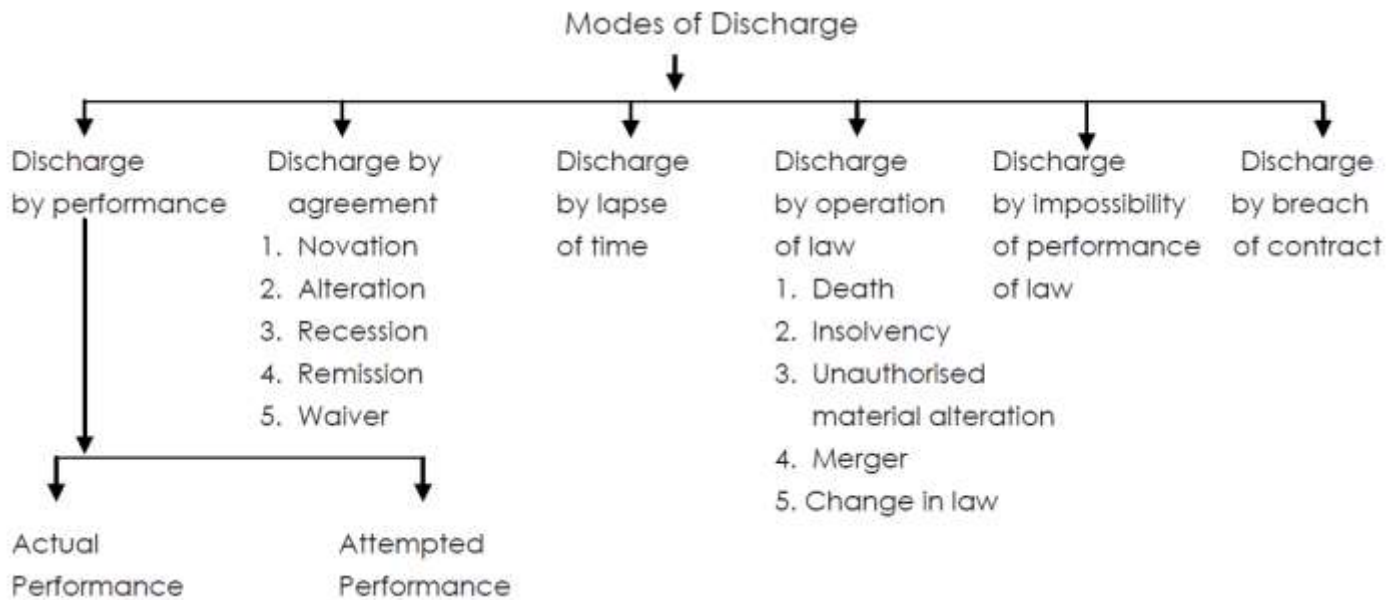
Where neither party makes any appropriation the payment shall be applied in discharge of the

debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

DISCHARGE OF CONTRACT

When the rights and obligations created by a contract come to an end, the contract is said to be discharged or terminated. In other words, discharge of contract means termination of contractual relationship between the parties.

Modes of discharge:



1. Discharge by performance:

Performance is the usual mode of discharge of a contract. Performance may be:

- (a) actual performance
- (b) attempted performance.

Actual performance is the fulfillment of the obligations arising from a contract by the parties to it, in accordance with the terms of the contract. Offer of performance is also known as attempted performance or tender of performance. A valid tender of performance is equivalent to performance.

2. Discharge by agreement:

The parties may agree to terminate the existence of the contract by any of the following ways:

- (a) Novation (Sec. 62)
- (b) Alteration (Sec. 62)
- (c) Rescission (Sec. 62)
- (d) Remission (Sec. 63)
- (e) Waiver (Sec. 63)

a. Novation:

Substitution of a new contract in place of the existing contract is known as "Novation of Contract". It discharges the original contract. The new contract may be between the same parties or between different parties. Novation can take place only with the consent of all the parties.

Example: A owes money to B under a contract. It is agreed between A, B and C that B should accept C as his debtor, instead of A. The old debt of A and B is at an end and a new debt from C to B has been contracted. There is novation involving change of parties.

b. Alteration:

Alteration means change in one or more of the terms of the contract. In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. But there is a change in the terms of the contract.

c. Rescission:

Rescission means "cancellation". All or some of the terms of a contract may be cancelled. Rescission results in the discharge of the contract.

d. Remission:

Remission means acceptance of a lesser performance than what is actually due under the contract. There is no need of any consideration for remission.

Example: A has borrowed ₹ 500 from B. A agrees to accept ₹ 250 from B in satisfaction of the whole debt. The whole debt is discharged.

e. Waiver:

Waiver means giving up or foregoing certain rights. When a party agrees to give up its rights, the contract is discharged.

Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

3. Discharge by lapse of time:

Every contract must be performed within a fixed or reasonable period. Lapse of time discharges the contract. The Indian Limitation Act has prescribed the period within which the existing rights can be enforced in courts of law.

Example: If a creditor does not file a suit within three years of debt, the debt becomes timebarred. He is deprived of his legal remedy.

4. Discharge by operation of law:

A contract may be discharged by operation of law in the following cases.

- a. Death
- b. Insolvency
- c. Unauthorized material alteration.
- d. Merger

a. Death:

In contracts involving personal skill or ability, death terminates the contracts. In other cases, the rights and liabilities of the deceased person will pass on to his legal representatives.

b. Insolvency:

The insolvency of the promisor discharges the contract. The promisor is discharged from all liabilities incurred prior to his adjudication.

c. Unauthorized material alteration:

Material alteration in the terms of the contract without the consent of the other party discharges the contract. Change in the amount of money to be paid, date of payment, place of payment etc. are examples of material alteration.

d. Merger:

When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end.

Examples: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lecturer ship.

5. Discharge by breach of contract:

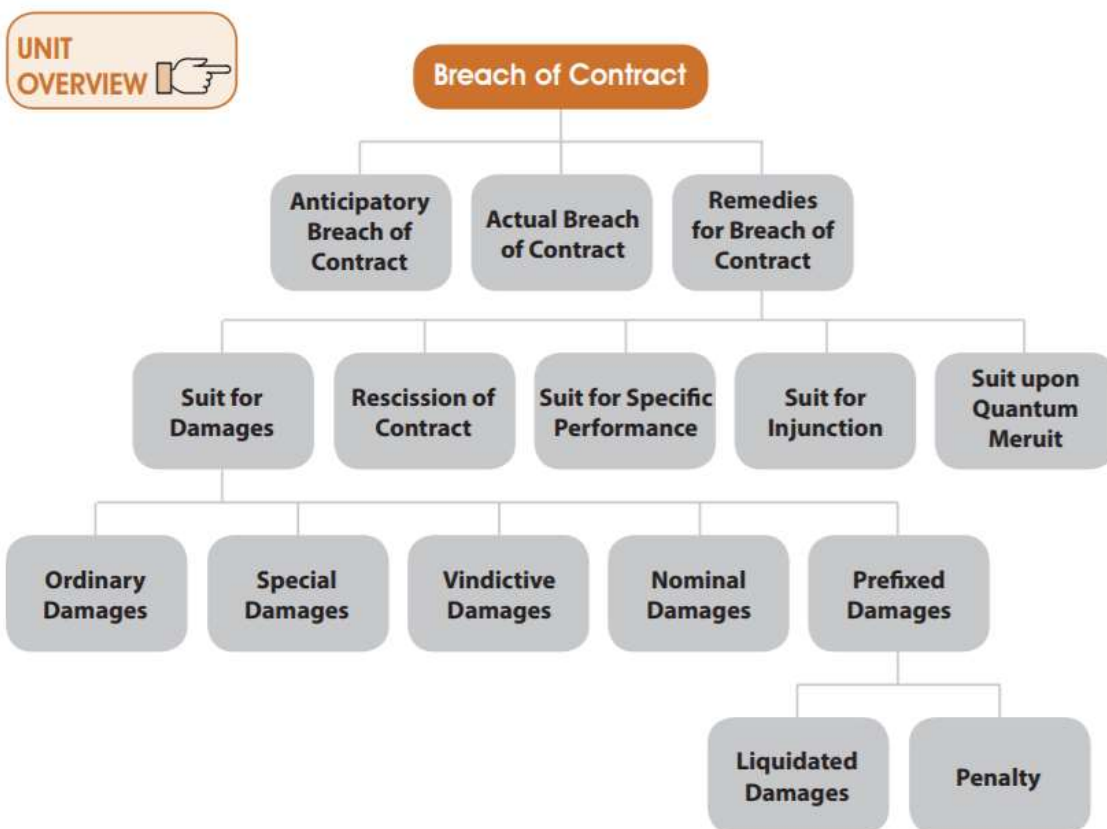
Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.

6. Discharge by impossibility of performance:

Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things.

Example: A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.

Breach of Contract



Parties to a contract are bound to perform their respective obligations. **If any party fails to perform the obligation imposed upon him, he is said to have committed breach of contract.** Thus breach means

"failure or refusal of a party to perform his obligation under a contract without any lawful excuse". The breach of contract may be:

- a) Actual breach of Contract
- b) Anticipatory breach of Contract.

Actual Breach of Contract:

It is also called "Present breach". Actual breach of contract occurs:

- (a) when during the performance of the contract, or
- (b) at the time of performance is due, one party fails or refuses or neglects to perform his obligation under the contract. Actual breach discharges the contract. It gives right to the aggrieved party to sue the party at fault for damages for breach of contract.

Example: A agrees to deliver to B, 5 tons of sugar on 5th July. He fails to do so on 5th July. There is a breach of contract by A.

Anticipatory breach of contract:

It is also called "constructive breach". Anticipatory breach of contract occurs:

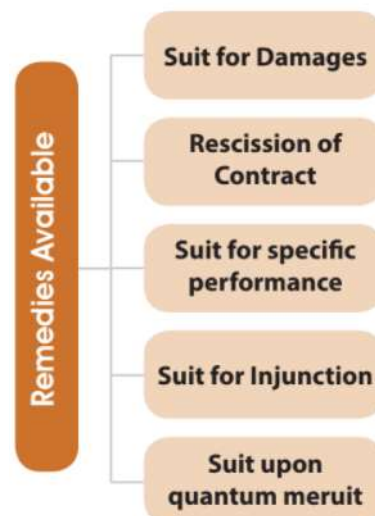
- (a) When a party repudiates his liability under the contract before the time for performance is due, or
- (b) When a party by his own act conduct disables himself from performing the contract.

Example:

1. A agrees to marry B. Before the agreed date of marriage, he marries X. The marriage contract has been repudiated by A by his conduct before the due date of its performance. The breach here is anticipatory breach.
2. X enters into a contract to supply Y with certain articles on the 1st of June. Before 1st June, X informs Y that he will not be able to supply the articles. The breach committed by X here is anticipatory breach of contract.

Anticipatory breach of contract does not by itself discharge the contract. The contract is discharged only when the aggrieved party accepts the repudiation of the contract. If he does not accept the repudiation, the contract continues to exist and may be performed by the other party, if possible.

Remedies for breach of contract



1. Suit for Rescission of the contract:

Rescission means the cancellation of a contract. When there is a breach of contract by one party, the other party may sue to treat the contract as rescinded. When the court grants rescission, the aggrieved party is free from all his obligations under the contract. He becomes entitled to compensation for any damage which he suffered

Example: X promises to deliver a book on 5th January and Y agrees to pay its price on receipt of the book. X fails to deliver the book for no valid reason. Y may treat the contract as repudiated and may refuse to pay the price.

2. Suit for damages:

Remedy by way of damages is the most common remedy available to the injured party. When a contract is breached, the injured party is entitled to file a suit for damages. Damages are a monetary compensation allowed to the injured party by the court for the loss or injury suffered by him. The fundamental principle underlying damages is not punishment but compensation.

3. Suit upon Quantum meruit:

Quantum meruit means as much as is merited or as much as earned. In other words, it means payment in proportion to the amount of work done. A right to sue on a quantum meruit arises where a contract partly performed by one party has become discharged by the breach of the other party. The claim on quantum meruit arises in the following cases.

- a. where the contract is discovered to be void.
- b. When something has been done without any intention to do so gratuitously.
- c. Where one party refuses to perform the contract.

4. Suit for specific performance of the contract:

In certain special cases of breach of contract, damages are not an adequate remedy. The court may, in such cases, order specific performance of the contract. The defaulting party will be forced to perform the act promised under the contract. It is granted only in the following cases:

- a. Where compensation in money is not an adequate relief.
- b. Where there is no standard for ascertaining the actual damage caused by the non-performance.
- c. Where compensation in money cannot be obtained.

5. Suit for Injunction:

Injunction is an order of the court restraining a person from doing a particular act. The court, by issuing injunction restrains a person from doing what he has promised not to do. Injunction may be temporary or permanent. It is a preventive relief granted at the discretion of the court.