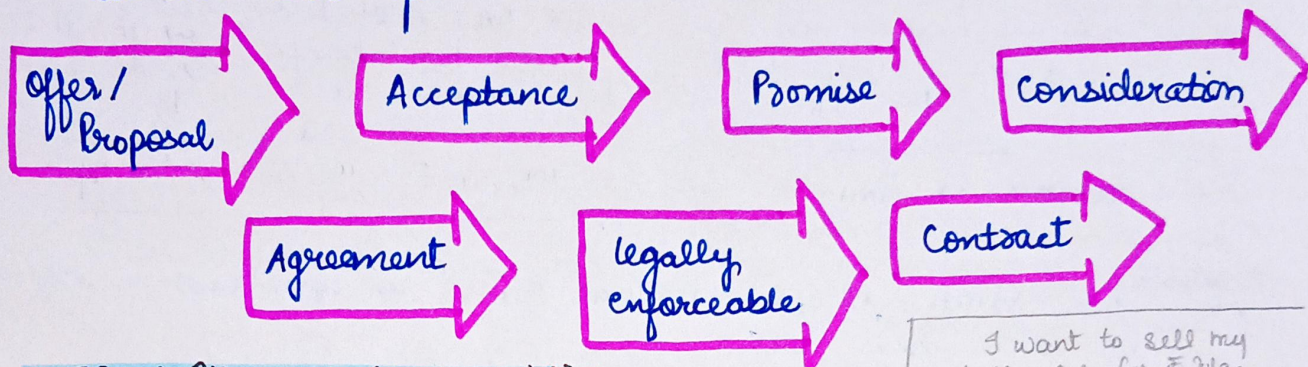


THE INDIAN CONTRACT ACT, 1872

INTRODUCTION

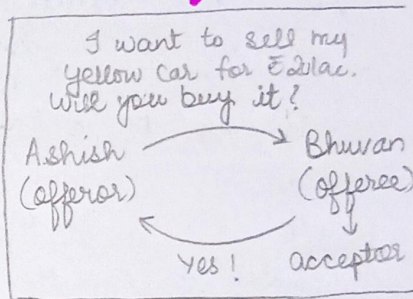
- applicable to whole of India
- Came into force on 1st September, 1872.
- Sec. 1-75 General Contracts (unit 1-6)
- Sec 124-238 Special Contracts (unit 7-8)



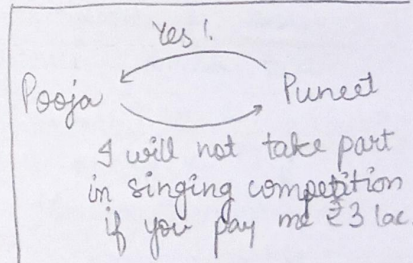
OFFER / PROPOSAL (Section 2(A))

- When one person
- signifies to another
- his willingness
- to do or to abstain from doing anything
- with a view to obtaining assent of another
- to such act or abstinence,
- he is said to make proposal.

to do →
something



abstain →
from doing
something



ESSENTIALS OF OFFER / PROPOSAL :-

- (1) The person making the proposal or offer is called the 'offeror'.
 - person to whom the offer is made is called the 'offeree'.
 - person accepting the offer is called the 'acceptor'.
- (2) For a valid offer, the party making it must express his willingness 'to do' or 'not to do' something.
- (3) Willingness must be expressed with a view to obtain the assent.
- (4) An offer can be positive as well as negative.

CLASSIFICATION OF OFFER

General offer

Special offer

Counter offer

Cross offer

Standing offer

(1) GENERAL OFFER

It is an offer made to public at large and hence anyone can accept and do the desired act.

(Carlill Vs. Carbolic Smoke Ball Co.)

(2) SPECIAL / SPECIFIC OFFER

The offer is made to a specific or an ascertained person.

- can be accepted only by that specified person to whom the offer has been made.
- (Boulton Vs. Jones)

(3) CROSS OFFER

- when two parties exchange identical offers in ignorance at the time of each other's offer.
 - cannot be constructed as acceptance of another's offer.
- (if amount in both parties offer is different, it is not a cross offer).

(4) COUNTER OFFER

- when offeree offers to qualified acceptance of the offer subject to modifications & variations in terms of original offer.
- leads to rejection of original offer.
- also called 'conditional acceptance'

(5) STANDING / CONTINUING / OPEN OFFER

- offer which is allowed to remain open for acceptance over a period of time.
- Tenders that are invited for supply of goods is a kind of standing offer.

ESSENTIALS OF A VALID OFFER

(1) It must be capable of creating legal relations :-

- Capable of being accepted and giving rise to legal relationship.
- A social invitation, even if it is accepted, does not create legal relations because it is not so intended.

(2) It must be certain, definite and not vague :-

Carlill Vs. Carbolic Smoke Ball Co. (Case law)

Carbolic Smoke Ball Co. advertised in newspaper
reward of £100 would be given to any person who contracted influenza after using smoke balls produced by their Co. acc. to printed direction

Mrs. Carlill used the smoke balls as per the direction & even then suffered from influenza
Held, she could recover the amt. as by using the smoke balls she had accepted the offer.

- If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.

(3) It must be communicated to the offeree :-

* LALMAN SHUKLA VS. GAURIDUTT

G sent his servant L to trace his missing nephew. He announced that who will trace him will get reward. G traced the boy in ignorance of that announcement. When he came to know, he claimed it. Not entitled to reward because -

Unless an offer is communicated, there can be no acceptance by it.

(Lalman Shukla vs. Gauridutt)

(4) It must be made with a view to obtaining the assent of the other party :-

- made with a view to obtain the assent
- not merely with a view to disclosing the intention of making an offer.

(5) It may be conditional :-

- an offer can be made subject to any terms and conditions by the offeror.

(6) Offer should not contain a term the non compliance of which would amount to acceptance :-

- One cannot say, that if acceptance is not communicated by a certain time, the offer would be considered as accepted.

(7) The offer may be either specific or general :-

- either public at large or to any specific person.

(8) The offer may be express or implied :-

- either by words or by conduct.

(9) Offer is different from a mere statement of intention, an invitation to offer, mere communication of information, a prospectus and advertisement :-

(i) * Harvey vs. Face (1893)

Plaintiff asks defendant by telegram two ques (i) Will you sell us Bumper Hall Pen? (ii) Telegraph lowest cash price. Defendant replied 2nd ques's ans. by quoting the price & not accepting the offer. P sued D saying that D made offer & is bound by it.

(i) a statement of intention and announcement

(ii) offer is different from an answer to question.

(Harvey vs. Face)

(iii) a statement of price is not an offer

(iv) Invitation to offer (advertisement of sale by auction)

(10) A statement of price is not an offer.

DIFFERENCE BETWEEN OFFER AND INVITATION TO OFFER

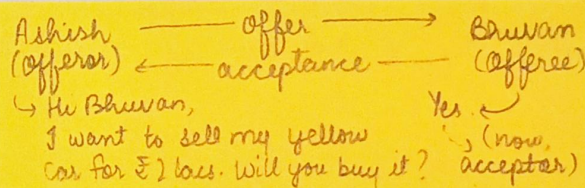
Basis	offer	Invitation to offer
<u>Meaning</u>	It is the final expression of willingness by offeror to be bound by the offer should the other party chooses to accept it. (Sec 2(a))	where a party without expressing final willingness proposes certain terms on which he is willing to negotiate, he does not make offer, but only invites the other party to make an offer on those terms.
<u>Intention of parties</u>	If a person who makes statement has intention to be bound by it as soon as other accepts, he is making an offer.	If a person has intention of negotiating on terms, it is called invitation to offer.
<u>Sequence</u>	An offer can't be an act precedent to invitation to offer.	Invitation to offer is always an act precedent to offer.

- 1) Prospectus by Co. to public to subscribe to its shares.
- 2) Display of goods for sale in shop window
- 3) Advertising auction sales
- 4) Quotation of prices sent in reply to query.

} Examples of Invitation to offer

ACCEPTANCE (Section 2(b))

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



"Promise = offer + acceptance"

RELATIONSHIP BETWEEN OFFER & ACCEPTANCE

According to Sir William Anson,

"Acceptance is to offer what a lighted match is to a train of gun powder."

- It in effect means that offer can be withdrawn just before it is accepted. (remove the train before match is applied)

Meaning of statement:-

Train of gun powder (offer) in itself is inert, but it is lighted match (acceptance) which causes the gun powder to explode.

Conclusion:-

Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.

• LEGAL RULES REGARDING A VALID ACCEPTANCE :-

(1) Acceptance can be given only by the person to whom offer is made :-

* BOULTON VS. JONES (1857)

Boulton bought business of Brocklehurst Jones (creditor of B.) placed order with B. for supply of goods (to set off the debt). Boulton supplied goods even when the order was not in his name. Held, no offer was made btw B & J.

In case of specific offer, it can be accepted only by the person to whom it is made.
(Boulton vs. Jones)

In case of a general offer, it can be accepted by any person who has the knowledge of offer. (Carlill vs. Carbolic Smoke Ball Co.)

(2) Acceptance must be absolute and unqualified :-

As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified.

(A) -----> I want to sell my -----> (B)
offerer TV for ₹10,000. Will you buy it? offerree

Case 1: - I may buy. (no promise, no contract)

Case 2: - I'm ready to buy it in ₹8,000 (no counter offer)

Case 3: - Yes, I'm ready to buy it. ✓ offer

(3) Acceptance must be communicated

* BROUDEN VS. METROPOLITAN RAILWAY CO.

(B) offer
Supplier (drafted agreement) → Manager of Railway
no communication X
(to send it to Co.'s solicitor) - letter of approval
for formal contract - Val in Drawer

- The acceptance must be communicated in some perceptible (expressed) form.

- Any conditional acceptance or acceptance with varying or too deviant condition is no acceptance.

- Conditional acceptance is a counter proposal.

(4) Acceptance must be in the prescribed mode :-

- When the mode of acceptance is prescribed in the proposal, it must be in that manner.

- The proposer is presumed to have consented to the acceptance.

(5) Time :-

Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within

the reasonable time and before the offer lapses.

(6) Mere silence is not acceptance :-

- cannot be implied from 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

★ FELTHOUSE VS. BINDLEY (1862)

F (uncle) ----- Offer -----> Nephew
Horse for £30. (no reply)
no answer, shall intended to keep
consider the horse (auctioneer sold the horse
mine at £30. by mis take)

Held that F could not succeed because acceptance wasn't communicated

(7) Acceptance by conduct / Implied acceptance :-

- provides acceptance of proposal by conduct as against other modes of acceptance i.e. verbal or written communication.
- when a person performs the act intended by the proposer as the consideration for the promise offered by him, the performance of the act constitutes acceptance.

• COMMUNICATION OF OFFER AND ACCEPTANCE :-

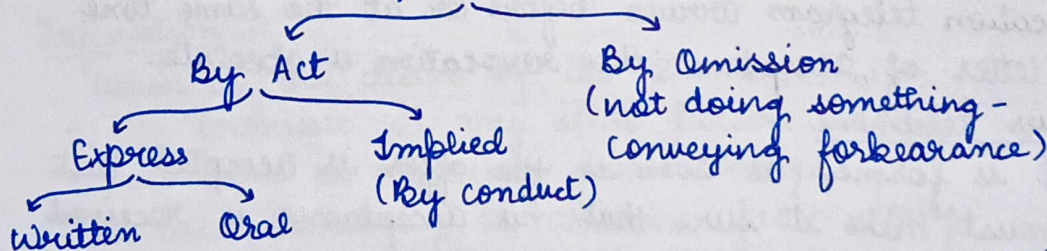
Communication of offer :-

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.

Mere receiving of the letter is not sufficient, he must receive or read the message contained in the letter.

Communication of acceptance :-

Modes of Communication



When is communication of acceptance completed?

- 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.
- As against the acceptor, when it comes to the knowledge of the proposer.

Acceptance over telephone or telex or fax :-

- When an offer is made of communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree, the contract is made at the place where the acceptance is received.
- In case of a call drops, and disturbances in the line, there may be not a valid contract.

Communication of special conditions :-

* LILY WHITE VS R. MANNUSWAMY

P ^{clothes} dry cleaner Post some (news & expenses)
(laundry receipt) held (court) - terms were unreasonable
in case of loss, - P recovered full value of saree from dry cleaner
claim - 15% of market price of that article

Special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly. (silently)

• REVOCAION OF OFFER AND ACCEPTANCE

Revocation of offer :-

- The offeror can revoke his offer before it is accepted
- If he does so, the offeree cannot create a contract by accepting the revoked offer.

Revocation of acceptance :-

In English law, the moment a person expresses his acceptance of an offer, such an acceptance becomes irrevocable, whether it is made orally or through the post.

In Indian law, the position is different as regards contract through post.

Contract through post :-

If the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.

Contract over telephone :-

The contract is formed as soon as the offer is accepted but the offeree must make it sure that his acceptance is received by the offeror.

If telephone unexpectedly goes dead during conversation, the acceptor must confirm again that the words of acceptance were duly heard by the offeror.

• MODES OF REVOCATION OF OFFER

- (1) By notice of revocation

(2) By lapse of time

→ The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.

(3) By non-fulfilment of condition precedent

→ where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.

(4) By death or insanity

(5) By counter offer

(6) By the non-acceptance of the offer according to the prescribed or usual mode.

(7) By subsequent illegality.

PROMISE (Section 2(b))

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.

Promiser - person who makes a promise.

Promisee - person to whom a promise is made

CONSIDERATION (Section 2(d))

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'.

Defination :-

When at the desire of the promisor,

- the promisee or any other person
- has done or abstained from doing
- or does something, 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 :-

- must be offered by the promisee or the third party at the desire or request of the promisor.

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

* DURGA PRASAD VS. BALDEO

D (dependent) promised to pay P as commission on article sold through their agency. Market was constructed by P at desire of C (collector). P was not bound to pay as it was without consideration & hence void.

(2) Consideration may move from promisee or any other person

* CHINNAVVA VS. RAMAYYA (1882)

Old lady — her property —> Daughter
(Cond: to pay certain sum of money to maternal uncle, by way of annuity)
Daughter —> executed a writing on same day
uncle —> later denies to pay annuity
amb. —> sued her

Consideration may proceed from the promisee or any other person who is not a party to the contract.

- There can be a stranger to a consideration but not stranger to a contract.

(3) Executed and Executory Consideration:-

A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory.

(4) Consideration may be past, present or future:-

In the event of the services being rendered in the past at the request or the desire of the promisor, the subsequent promise is regarded as an admission that the past consideration was not gratuitous.

(5) Consideration need not be adequate:-

- need not to be of any particular value.

- Exception - if it is shockingly less and the other party alleges that his consent was not free than this inadequate consideration can be taken as an ~~advice~~ evidence in support of this allegation.

(6) Performance of what one is legally bound to perform:-

- The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract.

- Similarly, an agreement by a client to pay to his counsel after the latter has been engaged, a certain sum over and above the fee, in the event of success of the case could be void, since it is without consideration.

(7) Consideration must be real and not illusory:-

If it is legally or physically impossible, it is not considered valid consideration.

(8) Consideration must not be unlawful, immoral or opposed to public policy:-

Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

SUIT BY A THIRD PARTY TO A CONTRACT

• Stranger to a contract cannot sue is known as a "doctrine of privity of contract."

The exceptions are as follows:-

(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 / arrangements,

→ a provision may be made for the benefit of a person, he may file the suit though he is not a party to the agreement.

(4) In the case of assignment of a contract,

→ when the benefit under a contract has been assigned, the assignee can enforce the contract but such assignment should not involve any personal skills.

(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.

(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.

• VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

(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 stand in near relationship to each other.

(iii) It must be in writing.

(iv) It must also be registered under the law.

(2) Compensation for past voluntary services

(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.

(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.

(4) Agency

No consideration is necessary to create agency.

(5) Completed gift

Here, the rule no consideration no contract does not apply.

(6) Bailment

No consideration is required to affect the contract of bailment.

(7) Charity

If a promisee undertakes the liability on the promise of the person to contribute to charity, then the contract shall be valid.

• AGREEMENT (Section 2(e))

Every promise and every set of promises, forming the consideration for each other.

Agreement = Offer / Proposal + Acceptance + Consideration

• ENFORCEABILITY BY LAW

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

CONTRACT (Section 2(h))

Contract is defined under Section 2(h) of the Indian Contract Act, 1872 as -

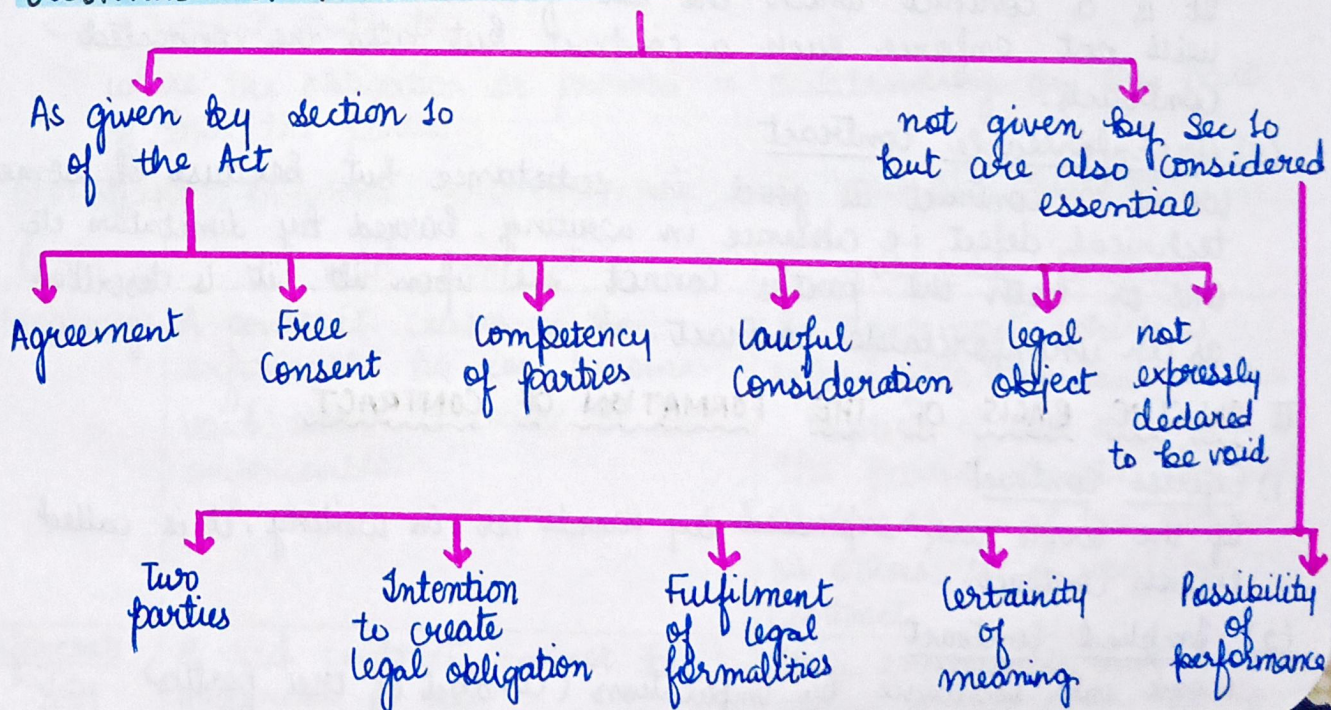
"an agreement enforceable by law."

Contract = Agreement + Enforceability
by law

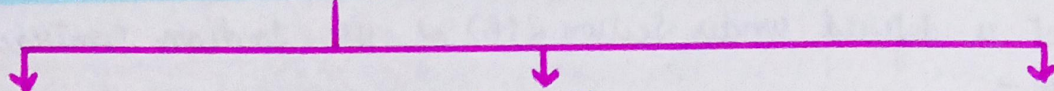
DIFFERENCE BETWEEN AGREEMENT AND CONTRACT

Basis	Agreement	Contract
<u>Meaning</u>	Every promise and every set of promises forming the consideration for each other (Promise + Consideration)	An agreement enforceable by law. (Agreement + legal enforceability)
<u>Scope</u>	It's a wider term including both legal and social agreement - ent.	It is used in a narrow sense with the specification that contract is only legally enforceable agreement.
<u>Legal obligation</u>	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.
<u>Nature</u>	All agreements are not contracts.	All contracts are agreements.

ESSENTIALS OF A VALID CONTRACT



TYPES OF CONTRACTS



- Validity or enforceability
- (1) Valid Contracts
 - (2) Void Contracts
 - (3) Voidable Contracts
 - (4) Illegal agreements
 - (5) Unenforceable contracts

- Formation
- (1) Express contract
 - (2) Implied contract
 - (3) Quasi-Contract
 - (4) E-Contracts

- Performance
- (1) Executed Contract
 - (2) Executory Contract
- Unilateral Contract Bilateral Contract

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

A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

(3) Voidable Contract

An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the others is 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.

(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 Contract

If the terms are expressed by words or in writing, it is called express contract.

(2) Implied Contract

come into existence by implication (conduct of the parties)

(2) → Tacit Contracts

- are those contracts that are inferred through the conduct of parties without any words spoken or written.
- It is not a separate form of contract but falls within the scope of implied contracts.

(3) Quasi Contract

- not an actual contract, but it resembles a contract.
- created by law under certain circumstances.

(4) E-contracts

When a contract is entered into by two or more parties using electronic means, such as e-mails is known as e-commerce contracts.

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

When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.

(2) Executory Contract

Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.

→ Unilateral Contract

in which one party has performed his duty.

→ Bilateral Contract

where the obligation or promise is outstanding on the part of both the parties.

• DIFFERENCE BETWEEN VOID CONTRACT AND VOIDABLE CONTRACT

Basis	Void Contract	Voidable Contract
<u>Meaning</u>	A contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	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.
<u>enforceability</u>	A void contract cannot be enforced at all.	It is enforceable only at the option of aggrieved party.

		and not at the option of other party.
<u>Cause</u>	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.
<u>Perform-ance of contract</u>	A void contract cannot be performed.	If the aggrieved party does not, within reasonable time, exercise his right, to avoid the contract, any party can sue the other for claiming the performance of the contract.
<u>Rights</u>	A void contract does not grant any legal remedy to any party.	The party whose consent was not free has the right to rescind the contract within a reasonable time. If so rescinded, it becomes a void contract. If it is not rescinded it becomes a valid contract.

• DIFFERENCE BETWEEN VOID AGREEMENT AND ILLEGAL AGREEMENT

<u>Basis</u>	<u>Void agreement</u>	<u>Illegal Agreement</u>
<u>Scope</u>	A void agreement is not necessarily illegal.	An illegal agreement is always void.
<u>Nature</u>	Not forbidden under law.	Are forbidden under law.
<u>Punish-ment</u>	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
<u>Collateral Agreement</u>	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

Unit - 4

PERFORMANCE OF CONTRACT

Obligations 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 the Contract Act or of any other law.

Types of performance

Where a party to a contract has done what he had undertaken to do -
Actual Performance

The promisor offers to perform his obligation but the promisee refuses to accept the performance - Offer to perform / Attempted performance

CONDITIONS TO BE SATISFIED FOR A VALID TENDER OR ATTEMPTED PERFORMANCE

- (1) It must be unconditional
- (2) It must be made at proper time and place.
- (3) Reasonable opportunity to examine goods.
- (4) It must be for whole obligation.

BY WHOM A CONTRACT MAY BE PERFORMED? (Section 40, 41 and 42)

(1) Promisor himself

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

(2) Agent

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

(3) Legal Representatives

- Any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract.
- Their liability under a contract is limited to the value of the property they inherit from the deceased

(4) Third persons: Effect of accepting performance from third person (Section 41)

Performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

(5) Joint Promisors (Section 42)

- When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfil the promise.
- If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfil the promise.
- If all of them die, the legal representatives of all of them must fulfil the promise jointly.

DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT

- When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir.
- In the matter of assignment, however the benefits of a contract can only be assigned but not the liabilities thereunder.

LIABILITY OF JOINT PROMISOR & PROMISEE

Devolution of Joint liabilities (Section 42)

- If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfil the promise.
 - After death of any one of them :- his legal representative jointly with the survivor or survivors should do so.
 - After the death of the last survivor :- the legal representatives of all the original co-promisors must fulfil the promise.
- Section 42 deals with voluntary discharge of obligations by joint promisors.

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

→ 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.

(If one of the joint promisors is made to perform the whole contract, he can call for a contribution from others).

- 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.

Effect of 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 promisors,
- neither does it free the joint promisor so released from responsibility to the other joint promisor or promisors.

Promisee releases one or more joint promisors

Other joint promisor(s) are not released from their liability

The released joint promisor remain liable to other joint promisors

Right of Joint Promisees (Section 43)

"Where 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 vests, 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."

• TIME OF PLACE FOR PERFORMANCE OF THE PROMISE

Section 46:- Where no application is to be made by the promisee and no time is specified } Performance should be within a reasonable time (if it differs from case, to be based on facts and circumstances).

Section 47:- Where time is specified and no application to be made by the promisee } Perform. at any time during the usual hours of business, on such day and place at such time as specified.

Section 48:- Application for performance to be made on a certain day } The promisee should apply for performance at a proper place within usual business hours

Section 49:- Where no application to be made and no place fixed for performance } The promisee should apply to the promisee to appoint a reasonable place for performance.

Section 50:- Performance in manner or at a time prescribed or sanctioned by promisee } To be performed in such manner or at such time as promisee prescribes or sanctions

• PERFORMANCE OF RECIPROCAL PROMISE

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

[When a contract consist of reciprocal promises to be simultaneously performed] → [no promisor needs to perform his promise] → [unless the promisee is ready and willing to perform his reciprocal promise.]

(ii) Order of performance of reciprocal promises (Section 52)

[Order of performance is expressly fixed by the contract] → Perform in that order

[Order is not expressly fixed] → Perform in that order which the nature of the transaction requires.

(iii) 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

- Contract becomes voidable at the option of the party so prevented, and
- He is entitled to compensation from the other party for any loss he may sustain in consequence of the non-performance of the contract

(iv) Effect of default as to that promise which should be first performed in contract consisting of reciprocal promises - Section 54

- Section 54 applies when the promises are reciprocal and dependent.
- If the promiser who has to perform his promise before the performance of the other's promise fails to perform it, he cannot claim performance of the other's promise, and is also liable for compensation for his non-performance.

(v) Effects of failure to perform at a time fixed in a contract in which time is essential - Section 55

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

Effect of acceptance of performance at time other than agreed upon

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 acceptance, he gives notice to the promisor of his intention to do so.

(vi) Agreement to do Impossible Act - Section 56

The impossibility of performance may be of the two types, namely

- initial impossibility
- subsequent impossibility

(a) Initial impossibility (impossibility existing at the time of contract)

→ when the parties agree upon doing of something which is obviously impossible in itself the agreement would be void.

→ Impossible in itself means impossible in the nature of things.

→ The fact of impossibility may be and may not be known to the parties.

If known to the parties

If unknown to the parties

If known to the promisor only

Agreement is void.

Contract is void

• Promisor should have known it with reasonable diligence
• The promisee is entitled to claim compensation for any loss he suffered on account of non-performance.

(b) Subsequent or supervening impossibility (becomes impossible after entering into contract)

→ when performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void.

→ The performance of a contract is quite possible when it is made. But subsequently, same event happens which renders the performance impossible or unlawful.

→ Such impossibility is called subsequent or supervening.

→ It is also called the post-contractual impossibility.

(vii) Reciprocal promise to do certain things that are legal and also some other things that are illegal - Section 57
where persons reciprocally promise

{ First to do certain things }
which are legal

and

{ Secondly, under specified
circumstances, to do
certain other things which
are illegal. }

First set of promises is a valid contract

Second is a void agreement.

(viii) "Alternative promise" one branch being illegal - Section 58

In the case of alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced.

• APPROPRIATION OF PAYMENTS

- Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debtors.
- In such cases, the payment is appropriated (i.e. adjusted against the debts) as per Section 59 to 61 of the Indian Contract Act.

• If debt to be discharged is indicated (Section 59)

Payment should be applied to that debt indicated either by express intimation or under circumstances implying a particular debt.

• If debt to be discharged is not indicated (Section 60)

- Creditor may apply it at his discretion to any lawful debt actually due and payable, where its recovery is or is not barred by law.
- However, the creditor shall not apply the payment to the disputed debt.

• If neither part appropriates (Section 61)

- The payment shall be applied in discharge of the debts in the order of time, whether they are or are not barred by law.
- If all the debts are equal, payment shall be applied proportionately.

• CONTRACTS, WHICH NEED NOT BE PERFORMED WITH THE CONSENT OF BOTH THE PARTIES

(i) Effect of novation (Section 62)

"If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."

a) Effect of novation

- Parties to a contract may substitute a new contract for the old one.
- Old contract is discharged and need not be performed.
- Parties to the contract may be same or different.
- It can take place only by mutual agreement between parties.

b) Effect of Rescission

- When the parties to a contract agree to rescind it, the contract need not be performed.
- Only the old contract is cancelled and no new contract comes to exist in its place.
- It is needless to point out that novation also involves rescission.
- The contract is discharge by mutual agreement.

c) Effect of alteration

- A contract is also discharged by alteration.
- The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one.

(ii) Promisee may waive or remit performance of promise (Section 63)

Every promisee may

- dispense with or remit, wholly or in part, the performance of the promise made to him, or
- may extend the time for such performance or
- may accept instead of it any satisfaction which he thinks fit.
- A contract may be discharged by remission.

(iii) Restoration of benefit under a voidable contract (Section 64)

- When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promiser.
- If the party rescinding the contract has received any benefit under the contract, he must restore such benefit to the person from whom he has received it.

(iv) Obligation of person who has received advantage under void agreement or contract that becomes void (Section 65)

When an agreement is discovered to be void or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

(v) Communication of Rescission (Section 66)

- Rescission must be communicated to the other party in the same manner as a proposal is communicated under Section 4 of the Indian Contract Act.
- Similarly, a rescission may be revoked in the same manner as a proposal is revoked.

(vi) Effects of neglect of promisee to afford promiser reasonable facilities for performance (Section 67)

- If any promisee :- neglects or refuses to afford the promiser reasonable facilities for the performance of his promise,
- If The promiser :- is excused by such neglect or refusal as to any non-performance caused thereby.

DISCHARGE OF CONTRACT

- A contract is discharged when the obligations created by it come to an end.
- A contract may be discharged in any one of the following ways-

Discharge by Performance

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance.

Actual Performance

When each of the parties has done what he had agreed to do under the agreement.

Attempted Performance

When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

Discharge by mutual agreement (Section 62)

If all parties to a contract mutually agree to replace the contract with a new one or annul or remit or alter it, then it leads to a discharge of the original contract due to a mutual agreement.

Discharge by impossibility of performance

- The impossibility may exist from the very start. In that case, it would be impossibility ab initio.
- Alternatively, impossibility may supervene. Supervening impossibility may take place owing to:

An unforeseen change in law

The destruction of the subject matter essential to that performance

The non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady

Declaration of a war

Discharge by lapse of time

- The Limitation Act, 1963 prescribes a specified period for performance of a contract.
- If the promisor fails to perform and the promisee fails to take action within this specified period, then the latter cannot seek remedy through law.
- It discharges the contract due to the lapse of time.

Discharge by operation of law

A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc

Discharge by breach of contract

- If a party to a contract fails to perform his obligation according to the time and place specified, then he is said to have committed a breach of contract.
 - Breach can be of two types
 - Actual Breach
 - Anticipatory Breach
- In both cases, the breach discharges the contract.

Promisee may waive or remit performance of promise

- A promisee can waive or remit the performance of promise of a contract, wholly or in part.
- He can also extend the time agreed for the performance of the same.
- A contract may be discharged by remission. (Section 63)

Effects of neglect of promisee to afford promisor reasonable

facilities for performance

If any promisee neglects or refuses to afford the promisor reasonable facilities for the performance of his part of promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby. (Section 67)

Merger of Rights

- In some situations, it is impossible that inferior and superior right coincides in the same person.
- In such cases, both the rights combine leading to a discharge of the contract governing the inferior rights.

THE INDIAN CONT-

RACT ACT, 1872

unit-5 Breach of Contract

BREACH OF CONTRACT

Breach means failure of a party to perform his or her obligation under a contract.

Breach of contract may arise in two ways:-

Actual Breach

Anticipatory Breach

Anticipatory Breach of a Contract

An anticipatory breach of a contract is a breach of contract occurring before the time fixed for performance has arrived.

Anticipatory breach of a contract may take either of two following ways:-

→ Expressly by words spoken or written

→ Implied by the conduct of one of the parties

→ Effect of anticipatory breach

The promise is excused from performance or from further performance further he gets an option:-

(1.) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance" or

(2.) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non performance.

But in this case, he will keep the contract alive for the benefit of the other party as well as his own, and the guilty party, if he so decides on re-consideration may still perform his part of the contract and can also take advantage of any supervening impossibility which may have the effect of discharging the contract.

Actual Breach of Contract

In contrast to anticipatory breach, it is a case of refusal to perform the promise on the scheduled date.

Actual breach of contract may be committed :-

At the time when the performance of the contract is due

During the performance of the contract

• REMEDIES FOR BREACH OF CONTRACT

Suit for damages

Compensation for loss or damage caused by breach of contract :-

On the breach of contract, the party who suffers from it such a breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused by him by breach.

Remedy by way of damages or kind of damages :-

- Remedy by way of damages is the most common remedy available to the injured party.
- This entitles the injured party to recover compensation for the loss suffered by it due to the breach of contract, from the party who causes the breach.
- The damages which may be awarded to the injured party may be of the following kinds :-

Damages

General/
Ordinary

Special

Vindictive
or exemplary

Nominal

Damages
for
deterioration
caused by
delay

Pre-fixed
damages

ORDINARY DAMAGES

- When a contract has been broken, the party who suffers by such a breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arise in the usual course of things from such breach.
- Such compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach.

SPECIAL DAMAGES

→ Where a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

VINDICTIVE OR EXEMPLARY DAMAGES

→ These damages may be awarded in only two cases :-

- a) for breach of promise to marry because it causes injury to his or her feelings.
- b) for wrongful dishonour by a banker for his customer's cheque

NOMINAL DAMAGES

→ These are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage.

→ It is awarded just to establish the right to decree for the breach of contract.

DAMAGES FOR DETERIORATION CAUSED BY DELAY

→ In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice.

PRE-FIXED DAMAGES

→ Sometimes parties to a contract stipulate at the time of its formation that on a breach of a contract by any of them, a certain amount will be payable as damages. It may amount to either liquidated damages or a penalty.

PENALTY AND LIQUIDATED DAMAGES

Indian law makes no distinction between 'penalty' and 'liquidity damages'. Thus, Court in India award only a reasonable compensation not exceeding the sum so mentioned in the contract if the parties have fixed what the damages will be the Courts will never allow more. But the Court may allow less.

Thus, a person complaining of breach of contract will get reasonable compensation and is not entitled to realise anything by way of penalty.

Exception

Where any person gives any bond to the Central or state government for the performance of any public duty or act in which the public are interested, on breach of the condition of any such instrument, he shall be liable to pay the whole sum mentioned therein.

DISTINCTION BETWEEN PENALTY AND LIQUIDATED DAMAGES

- (1) Penalty and liquidated damages have one thing in common that both are payable on occurrence of a breach of contract.
- (2) If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
- (3) Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because, mere delay in payment is unlikely to cause damage.
- (4) The expression used by the parties is not final. The Court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
- (5) The essence of a penalty is payment of money stipulated as a terrorem of the offending party. The essence of liquidated damages is a genuine pre-estimate of the damage.

OTHER REMEDIES

Besides claiming damages as a remedy for the breach of contract, the following remedies are also available:-

RECESSION OF CONTRACT

When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case, he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.

QUANTUM MERUIT

As much as the party doing the service has deserved. The claim for Quantum Meruit arises in the following cases:-

- (a) When an agreement is discovered to be void or when a contract becomes void.
- (b) When something is done without any intention to do so gratuitously.
- (c) When there is an express or implied contract to render services but there is no agreement as to remuneration.
- (d) When one party abandons or refuses to perform the contract.
- (e) Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.

SUIT FOR SPECIFIC PERFORMANCE

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

SUIT FOR INJUNCTION

Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction orders', restrain him from doing what he promised to do.

- Party rightfully rescinding contract, entitled to compensation.
- A person who rightfully rescinds a contract is entitled to compensation for any damage which he has sustained through non fulfilment of the contract.

unit - 6 Contingent and Quasi Contracts

CONTINGENT CONTRACTS

Definition of Contingent Contract

"A contract to do or not to do something, if some event, collateral to such contract does or does not happen."

Essentials of a Contingent Contract

- (a) The performance of a contingent contract would depend upon the happening or non happening of some event or condition.
- (b) The event referred to as collateral to the contract.
- (c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.
- (d) The event must be uncertain. Where the event is certain or bound to happen. The contract is due to be performed, then it is a not contingent contract.

Rules Relating to Enforcement

(A) Time is mentioned

- 1) Contingent on happening of specified event within the fixed time :-
If a contingent contract is dependent upon the happening of future

event within a fixed time will become void if such eve does not happen within the fixed time or the event becomes impossible.

2) Contingent on specified event not happening within fixed time :-
Such contract can be enforced if the event does not happen within a fixed time.

(B) Time is not mentioned :-

1) Enforcement of contracts contingent on an event happening :-
Such contracts can be enforced only when the events happen, if the event becomes impossible then the contingent contract is void.

2) Enforcement of contingent contract on an event not happening :-
Such contracts can be enforced only when the happening becomes impossible.

(C) A contract would ceased to be enforced :-

If it is contingent upon the conduct of a living person and the living person does something to make the event impossible of happening.

(D) Contingent on an impossible event :-

Contingent agreements to do or not to do something if an impossible event happens are void.

• DIFFERENCE BETWEEN CONTINGENT CONTRACT & WAGERING CONT.

Basis	Contingent Contract	Wagering Contract
<u>Meaning</u>	A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.	A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening.
<u>Reciprocal promises</u>	They may not contain reciprocal promises.	It consists of reciprocal promises.
<u>Uncertain event</u>	The event is collateral.	The uncertain event is the core factor.
<u>Nature of contract</u>	Contingent contract may & not be wagering in nature.	A wagering agreement is essentially contingent in nature.
<u>Effect of Contract</u>	Contingent contract is valid.	Wagering agreement is void.

Interest of contracting parties

Contracting parties have interest in the subject matter in contingent contract.

The contracting parties have no interest in the subject matter.

Doctrine of mutuality of loss & gain

Contingent contract is not based on doctrine of mutuality of loss and gain.

A wagering contract is a game, losing and gaining alone matters.

• QUASI CONTRACTS

→ Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as quasi contracts as they create same obligations as in the case of regular contracts.

→ Quasi contracts are based on principles of equity, justice and good conscience.

"No man must grow rich out of another person's loss."

Silent features of Quasi Contract

(a) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.

(b) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law, and

(c) Thirdly, it is a right which is available not against all the world, but against a particular person or persons only, so that in the respect it resembles a contractual right.

• CASES DEEMED AS QUASI-CONTRACTS

Claims for necessaries supplied (Section 68)

Payment by an interested person (Section 69)

Obligation of a person enjoying benefit of non gratuitous act (Section 70)

Responsibility of finder of goods (Section 71)

Money paid by mistake or under coercion (Section 72)

(A) Claim for necessaries supplied to persons incapable of contracting

→ If a person incapable of entering into a contract, or anyone whom he is legally bound to support is supplied by another person with necessaries suited to his condition in life, the person

who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

(B) Payment by an interested person

→ A person who is interested in the payment of money which another is bound by law to pay and who therefore pays it, is entitled to be reimbursed by the other.

(C) Obligation of person enjoying benefits of non gratuitous act

→ Where a person lawfully does anything for another person or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore the thing so done or delivered.

(d) Responsibility of finder of goods :-

→ A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee. Thus, a finder of lost goods has:-

- (i) to take proper care of the property as man of ordinary prudence would take.
- (ii) no right to appropriate the goods and
- (iii) to restore the goods if the owner is found.

Case law :- Hollins Vs. Fowler L.R. 8 H.L.

(e) Money paid by mistake or under coercion :-

→ A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

→ Every kind of payment of money or delivery of goods for every type of mistake is recoverable.

DIFFERENCE BETWEEN QUASI CONTRACTS AND CONTRACTS

Basis	Quasi - contract	Contract
<u>Essential for the valid contract</u>	The essentials for the formation of a valid contract are absent.	The essentials for the formation of a valid contract are present.
<u>Obligation</u>	Imposed by law.	Created by the consent of the parties.