

THE INDIAN CONTRACT ACT, 1872

UNIT -1: NATURE OF CONTRACTS

CONTRACT [Section 2(h)] - “**an agreement enforceable by law**”

Two essential elements of contract:-

1. **Agreement** and
2. **Enforceable by law.**

AGREEMENT [section 2(e)] – “**Every promise and every set of promises, forming the consideration for each other**”.

AGREEMENT = OFFER/PROPOSAL + ACCEPTANCE

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**”.

Agreement is the result of the proposal made by one party to the other party and that other party gives his acceptance thereto of course for mutual consideration.

ENFORCEABILITY BY LAW – **contract must give rise to legal obligation.**

PROPOSAL ⇨ ACCEPTANCE ⇨ ACCEPTED PROPOSAL/AGREEMENT ⇨ LEGAL ENFORCEABILITY ⇨ CONTRACT

Difference between Agreement and Contract

BASIS	AGREEMENT	CONTRACT
MEANING	Every promise and every set of promise, forming the consideration for each other. Offer + Acceptance	Agreement enforceable by law. Agreement + legal enforceable
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 legal 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 grant certain rights to every party.
NATURE	All agreements are not contracts.	All contracts are agreements.

ESSENTIALS OF A VALID CONTRACT

As given by Section 10 of ICA, 1872

- ♣ Offer and acceptance or an agreement.
- ♣ Free Consent: Two or more persons are said to consent when they are **agree upon the same thing in the same sense.**

- ♣ **Capacity of the parties:** Every person is competent to contract who is of the **age of majority, sound mind and not otherwise disqualified by law.**
- ♣ **Consideration:** "quid pro quo" i.e **something in return**
- ♣ **Lawful consideration and object:** Not prohibited by law, fraudulent or opposed to public policy.
- ♣ **Not expressly declared to be void:** Should not be illegal

Not covered by Section 10 of ICA, 1872

- ♠ **Two parties.**
- ♠ **Parties must intend to create legal obligation:** Intention is imp. **Social and Domestic are not enforceable.**
- ♠ **Other formalities to be complied with in certain cases:** Certain contracts to be in writing and registered too.
- ♠ **Certainty of meaning:** Must be certain not vague (not clear) or indefinite.
- ♠ **Possibility of performance of an agreement:** An agreement to do impossible act is not enforceable.

TYPES OF CONTRACT

ON THE BASIS OF THE VALIDITY:

- ♥ **Valid Contract:** An agreement which is **binding and enforceable.**
- ♥ **Void Contract:** Which **ceases to be enforceable by law** becomes void when it ceases to be enforceable (cannot be enforced by a court of law).
- ♥ **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 or others is a voidable contract.

BASIS	VOID CONTRACT	VOIDABLE CONTRACT
MEANING	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.
CAUSE	Change in law or circumstances beyond the contemplation of parties.	If the consent of the party was not free .
PERFORMANCE OF CONTRACT	Cannot be performed	If the aggrieved party does not, within reasonable time, exercise his rights to avoid the contract, any party can sue the other for claiming the performance of the contract.
RIGHTS	No rights available to any party	The party whose consent was not free has the right to rescind the contract.

- ♥ **Illegal Contracts:** It is a contract which the law forbids to be made.

BASIS	VOID AGREEMENT	ILLEGAL AGREEMENT
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SCOPE`	<i>Is not necessarily illegal</i>	<i>Is always void</i>
NATURE	<i>Not forbidden by law</i>	<i>Are forbidden under law</i>
PUNISHMENT	<i>Not liable for any punishment</i>	<i>Liable for punishment</i>
COLLATERAL AGREEMENT	<i>May be valid also</i>	<i>Are always void</i>

- ♥ **Unenforceable Contract:** Where a contract is *good in substance but because of some technical defects* 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.

ON THE BASIS OF FORMATION:

- ♦ **Express Contract:** If the terms are *expressed by words or in writing*
- ♦ **Implied Contract:** Come into *existence by implication*(by law or by action)
- ♦ **Tacit contract:** *By conduct of parties* without any words spoken or written.
- ♦ **Quasi-contract:** 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.*
- ♦ **E-contracts:** *Contract through electronic* means such as emails is known as e-commerce contracts.

ON THE BASIS OF PERORMANCE OF THE CONTRACT:

- ♣ **Executed Contracts:** When the *act is done or executed* or the forbearance (tolerance) is brought on record, then the contract is an executed contract.
- ♣ **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 contract.
 - a. **Unilateral contract:** *One sided contract*, one party performed his duty or obligation and other obligation is outstanding.
 - b. **Bilateral contract:** Where the *obligation or promise is outstanding on the part of both the parties.*

PROPOSAL/OFFER [SECTION 2(a)] OF THE ICA, 1872

DEFINATION: "When one person signifies to another his willingness to do or abstain from doing anything (mujhe padhane se rokne ka offer) with a view to obtaining the assent of that to such act or abstienence, he is said to make a proposal".

CLASSIFICATION OF OFFER:

- ♠ **General offer:** *Offer made to public at large* and hence anyone can accept and do the desired act.
- ♠ **Special offer:** Offer is made to *a specific or an ascertained person.*

- ♣ **Cross offer:** When *two parties exchange identical offers* in ignorance at the time of each other's offer, the offers are called

cross offer.

- ♣ **Counter offer:** When the *offeree offers to qualified acceptance* of the offer subject to modification and variations in the terms of original offer, he is said to have a counter offer also called conditional acceptance.
- ♣ **Standing or continuing or open offer:** Offer which is allowed to *remain open for acceptance over a period of time*. Eg.: tenders invited for supply of goods.

ESSENTIALS OF VALID OFFER:

- ♥ ***It must be capable of creating legal relations:*** Valid offer in eyes of law. Social and domestic are not covered.
- ♥ ***It must be certain, definite and not vague:*** Otherwise it cannot create any contractual relationship.
- ♥ ***It must be communicated to the offeree:*** Otherwise there can be no acceptance of it.
- ♥ ***It must be made with a view to obtaining the assent (formal agreement to something) of the other party.***
- ♥ ***It may be conditional:*** Can be made subject to any terms and conditions by the offeror.
- ♥ ***Offer should not contain a term the non compliance of which would amount to acceptance:*** Thus one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.
- ♥ ***The Offer may be either specific or general.***
- ♥ ***Offer is different from a mere statement of intention, an invitation to offer, a mere communication of information, casual equity, a prospectus and advertisement:*** "An invitation to make an offer" the person making the invitation does not make an offer rather invites the other party to make an offer.
- ♥ ***The offer may be express or implied.***
- ♥ ***A statement of price is not an offer.***

WHAT IS INVITATION OF OFFER?

An invitation to offer is ***only a circulation of an offer it is an attempt to induce offers and preceded a definite offer***. It is the process of negotiation. Offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Mere statement of lowest price is not offer intention is to seen. E.g. invitation by a company to the public to subscribe for its shares.

ACCEPTANCE [SECTION 2(b)] of the ICA, 1872

DEFINATION: “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”.

RELATIONSHIP BETWEEN OFFER AND ACCEPTANCE

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

- ♦ Offer can be withdrawn just before it is accepted.
- ♦ Acceptance converts the offer into a promise and then it is too late to revoke it.
- ♦ Offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship.
- ♦ Offer remains an offer as long as it is not accepted but becomes a contract as soon as it is accepted.

LEGAL RULES REGARDING A VALID ACCEPTANCE:

- ♣ Acceptance can be given by the person to whom offer is made.
- ♣ Acceptance must be absolute and unqualified: Acceptance is valid only when it is absolute and unqualified and is **also expressed in some usual and reasonable manner** unless the proposal prescribes the manner in which it must be accepted. If the proposal prescribes the manner in which it must be accepted, the it must be accepted accordingly.
- ♣ The acceptance must be communicated: To conclude a contract between the parties, the acceptance **must be communicated in some perceptible (that can be seen or felt) form**.
- ♣ Acceptance must be in the prescribed mode.
- ♣ Time: Acceptance must be **within specified time limit, if no time specified the within reasonable time**. Reasonable time depends upon the facts and circumstances of the particular case.
- ♣ Mere silence is not acceptance: **Mere silence or failure to answer is not acceptance**, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.
- ♣ Acceptance by conduct/implied acceptance: When a person **performs the act intended by the proposer** as the consideration for the promise offered by him, the performance of the act constitute acceptance.

COMMUNICATION OF OFFER AND ACCEPTANCE

COMMUNICATION OF OFFER: “Communication of offer is complete when it comes to the knowledge of the person to whom it is made”. When proposal is made by post, the communication will be complete when the letter containing the proposal reaches the person to whom it is made. Mere receiving the letter is not sufficient, he must receive or read the message contained in the letter.

COMMUNICATION OF ACCEPTANCE:

- ♣ **Modes of acceptance:**

- ◆ Communication by act: Would include any *expression of words* whether written (letters, telegrams, faxes, emails and advertisement) or *oral* (telephone messages). Communication include any conduct.
- ◆ Communication of acceptance by 'omission' to do something: Omission is conveyed by *a conduct or a forbearance* on the part of one person to convey his willingness or assent.
- ♣ When communication of acceptance is complete. It is complete,
 - ♥ As against the proposer (jo acceptance file kar raha hai), 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*.
- ♣ Where a proposal is accepted by a letter sent by the post,
 - ♣ As against the proposer, when the *letter of acceptance is posted*
 - ♣ As against the acceptor, when the *letter reaches the proposer*
- ♣ Acceptance over telephone or telex or fax: The contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received.
- ♣ Communication of special conditions: *Special conditions are tacitly* (implied without being directly stated eg. Conditions of travel printed are printed at the back of the tickets) and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

COMMUNICATION OF PERFORMANCE:

Communication of a proposal is complete when it comes to the knowledge of the person to whom it is meant.

- ♣ From the viewpoint of proposer, when the acceptance is *put in to a course of transmission*, when it would be out of the power of acceptor.
- ♣ From the view point of acceptor himself, it would be complete *when it comes to the knowledge of the proposer*.

At times the offeree may be required to communicate the performance (or act) by way of acceptance. In this case it is not enough if the offeree merely performs the act but he should also communicate his performance unless the offer includes a term that a mere performance will constitute acceptance.

RECOVATION OF OFFER AND ACCEPTANCE

Communication of revocation (of the proposal or its acceptance) is complete.

- ◆ As against the person 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, and
- ◆ As against the person to whom it is made, when it *comes to his knowledge*.

If you revoke your proposal made to me by a telegram, the revocation will be complete, as far as you are concerned when you are dispatched the telegram. But as far as i am concerned, it will be complete only when i receive the telegram.

Revocation of acceptance by me will be complete when i dispatch the telegram and against you, it will be complete when it reaches you.

- ♦ **Contract through post:** The acceptor or can revoke his acceptance any time before the letter of acceptance reaches the offeror, if the revocation telegram arrives before or at the same time with the letter of acceptance, the revocation is absolute.
- ♦ **Contract over telephone:** 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, otherwise there will be no contract, as communication of acceptance is not complete.

REVOCATION OF PROPOSAL OTHERWISE THAN BY COMMUNICATION

MODES OF REVOCATION:

- ♥ ***By notice of revocation.***
- ♥ ***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.
- ♥ ***By non fulfilment of condition precedent:*** Where the acceptor fails to fulfil a conditions precedent to acceptance the proposal gets revoked.
- ♥ ***By death or insanity:*** when it comes to the knowledge of the acceptor.
- ♥ ***By counter offer.***
- ♥ ***By the non acceptance of the offer according to the prescribed or usual mode.***
- ♥ ***By subsequent illegality.***

UNIT -2: CONSIDERATION

DEFINITION: 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 act or abstinence or promise is called consideration for the promise”.

The term used in the sense of *quid pro quo*, i.e. **something in return**.

LEGAL RULES REGARDING CONSIDERATION

- ♣ **CONSIDERATION MUST MOVE AT THE DESIRE OF THE PROMISOR.**
- ♣ **CONSIDERATION MAY MOVE FROM PROMISEE OR ANY OTHER PERSON.**
- ♣ **EXECUTED AND EXECUTORY CONSIDERATION.**
- ♣ **CONSIDERATION MAY BE PAST, PRESENT OR FUTURE.**
- ♣ **CONSIDERATION NEED NOT BE ADEQUATE:** 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 regards as having some value.*
- ♣ **PERFORMANCE OF WHAT ONE IS LEGALLY BOUND TO PERFORM:** *(consideration must not be for existing duty) the performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration.*
- ♣ **CONSIDERATION MUST BE REAL AND NOT ILLUSORY:** It must be something to which the law attaches some value.
- ♣ **CONSIDERATION MUST NOT BE UNLAWFUL, IMMORAL, OR OPPOSED TO PUBLIC POLICY.**

SUIT BY A THIRD PARTY TO A CONTRACT

Though under the ICA, 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.*

The aforesaid rule, **that strangers 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:

- ♣ **IN 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.
- ♣ **IN THE CASE OF FAMILY SETTLEMENT,** if the terms of the settlement are reduced into writing, the members of family who originally had been parties to the settlement may enforce the agreement.

- ♠ IN THE CASE OF CERTAIN MARRIAGE CONTRACT/ARRANGEMENTS, a provision may be made for the benefits of a person, he may file the suit though he is not a party to the agreement.
- ♠ IN THE CASE OF ASSIGNMENT OF A CONTRACT, when the benefits under a contract has been assigned, the assignee can enforce the contract.
- ♠ 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.
- ♠ IN THE CASE OF CONVENANTS RUNNING WITH THE LAND, the person who purchases land with notice that the owner land is bound by certain duties affecting land, the covenant affecting the land may be enforced by the successor of the seller.
- ♠ CONTRACTS ENTERED INTHROUGH AN AGENT, the principal can enforce the contract 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

The general rule is that an agreement made without consideration is void. However there are certain exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

- ♥ NATURAL LOVE AND AFFECTION: conditions to be fulfilled
 - (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*.
- ♥ COMPENSATION FOR PAST VOLUNTARY SERVICES: 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 *voluntary*.
 - (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*.
- ♥ PROMISE TO PAY TIME BARRED DEBT: where in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration.
- ♥ AGENCY: No consideration is necessary to create an agency.
- ♥ COMPLETED GIFT.
- ♥ BAILMENT.
- ♥ CHARITY.

UNIT – 3:- OTHER ESSENTIAL ELEMENTS OF A CONTRACT

CAPACITY TO CONTRACT

“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”.

LAW RELATING TO MINOR’S AGREEMENT/POSITION OF MINOR

- ♣ A CONTRACT MADE WITH OR BY A MINOR IS VOID AB-INITIO: A minor is not competent to contract and any agreement with or by a minor is void from the beginning.
- ♣ NO RATIFICATION AFTER ATTAINING MAJORITY: A minor cannot ratify the agreement on attaining majority as the original agreement is void ab-initio and a void agreement can never be ratified.
- ♣ MINOR CAN BE A BENEFICIARY OR CAN TAKE BENEFITS OUT OF A CONTRACT: A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership.
- ♣ 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.
- ♣ LIABILITY FOR NECESSARIES: A claim for necessities supplied to a minor is enforceable by law. But a minor is not liable for any price that he may promise and never for more than the value of the necessities. There is no personal liability of the minor, but only his property is liable.
- ♣ CONTRACT BY GUARDIAN – HOW FAR ENFORCEABLE: Though a minor’s agreement is void, his guardian can, under certain circumstances enter into a valid contract on minor’s behalf. The guardian of a minor has no power to bind the minor by a contract for the purchase of immovable property.
- ♣ NO SPECIFIC PERFORMANCE.
- ♣ NO INSOLVENCY.
- ♣ PARTNERSHIP.
- ♣ MINOR CAN BE AN AGENT: But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.
- ♣ MINOR CANNOT BIND PARENT OR GUARDIAN: Even for necessities. The parents will be liable only when the child is acting as an agent for parents.
- ♣ JOINT CONTRACT BY MINOR AND ADULT: In such a case, the adult will be liable on the contract and not the minor.
- ♣ MINOR AS SHAREHOLDER: Cannot be shareholder.

- ♣ LIABILITY FOR TORTS: *A tort is civil wrong.* A minor is liable in tort unless the tort in reality is a breach of contract.
- ♣ SURETY FOR A MINOR: In a contract of guarantee when an *adult stands surety for a minor then he (adult) is liable to third party* as there is direct contract between the surety and the third party.

PERSON OF SOUND MIND

"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 judgment as to its effect upon its interest".

Person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind. Person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

CONTRACT BY DISQUALIFIED PERSONS:

The following persons fall in this category: *Foreign sovereigns and ambassadors, alien enemy, corporations, convicts, insolvents etc.*

FREE CONSENT

"two or more persons are said to consent when they agree upon the same thing in the same sense".

ELEMENTS VITIATING FREE CONSENT

♠ COERCION:

- ♥ *Committing or threatening to commit any act* forbidden by the India penal code; or
- ♥ The *unlawful detaining or threatening to detain any property* to the prejudice of any person whatever,
- ♥ With the intention of *causing any person to enter into an agreement.*
- ♥ It is to be noted that is immaterial whether the Indian penal code is or is not in force at the place where the coercion is employed.

Effect of coercion:

- *Voidable at the option of the party whose consent was so obtained.*
- *As to the consequences of the rescission of voidable contract, the party rescinded a void contract should, if he has received any benefit, there under from the other party to the contract, restore such benefits so far as may be applicable, to the person from whom it was received.*
- *A person to whom money has been paid or anything delivered under coercion must repay or return it.*

♠ UNDUE INFLUENCE:

- ◆ *Relation between the parties.*
- ◆ *Position to dominate the will.*

A person is deemed to be in such position in the following conditions:

- ♣ Real and apparent authority: Where a person holds a real authority over the other as *in the case of master and servant, doctor and patient and etc.*
- ♣ Fiduciary relationship: Where relation of trust and confidence exist between the parties to a contract. Such type of relationship exists *between father and son, solicitor and client, husband and wife, creditor and debtor, etc.*
- ♣ Mental distress: An undue influence can be used against a person to get his consent on a contract where the mental capacity of *the person is temporarily or permanently affected by the reason of mental or bodily distress, illness or old age.*
- ♣ Unconscionable bargains: Unfair bargains are witnessed mostly in money – *lending transactions and in gifts.*
- ♦ *The object must be to take undue advantage.*
- ♦ *Burden of proof: Dominate party*

Power to set aside contract induced by undue influence:

When consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there under, upon such terms and conditions as to the court may seem just.

♠ FRAUD:

The following are the essential elements of the fraud:

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

Effect of fraud upon validity of a contract: The contract is voidable at option of the party defrauded and he has the following remedies:

- ♥ He can *rescind* the contract within a reasonable time.
- ♥ He can *sue for damages.*
- ♥ 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 obligations to disclose the whole truth to the other party. *There is no duty to disclose facts which are within the knowledge of both the parties.*

Silence is fraud:

Duty of persons to speak:

Following contracts come within this category:

- ♣ **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.*
- ♣ **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.
- ♣ **Contract of marriage:** *Every material fact must be disclosed* by the parties to a contract of marriage.
- ♣ **Contract of family settlement:** These contract also require *full disclosure of material facts* within the knowledge of the parties.
- ♣ **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.

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 amount to speech. In case of fraudulent silence, contracts is not voidable if the party whose consent was so obtained had the means of discovering the truth with ordinary diligence.

♠ MISREPRESENTATION: There is misrepresentation:

- ♠ *Statement of fact, which of false*, would constitute misrepresentation if the *maker believes it to be true but which is not justified by the information he possesses;*
- ♠ When there is a *breach of duty by a person without any intention to deceive* which brings an advantage to him;
- ♠ When a *party causes, even though done innocently*, the other party to the agreement to make a mistake as to the subject matter.

DIFFERENCE BETWEEN COERCION AND UNDUE INFLUENCE

BASIS	COERCION	UNDUE INFLUENCE
NATURE OF ACTION	It involves the <i>physical force or threat.</i>	It involves <i>moral or mental pressure.</i>
INVOLVEMENT OF CRIMINAL ACTION	It involves committing or threatening to commit and act forbidden by Indian penal code or detaining or threatening to detain property unlawfully.	<i>No such illegal act is committed</i> or a threat is given.
RELATIONSHIP BETWEEN PARTIES	It is <i>not necessary</i> that there must be some sort of relationship between the parties.	<i>Some sort of relationship</i> between the parties is <i>absolutely necessary.</i>
EXERCISED BY	<i>Coercion need not proceed from the</i>	Undue influence is always

WHOM	<i>promisor nor need it be the directed against the promisor. It can be used even by a stranger.</i>	exercised <i>between parties to the contract.</i>
ENFORCEABILITY	The contract is <i>voidable</i> at the option of the party whose consent has been obtained by the coercion.	Where the consent is induced by undue influence, the contract is <i>either voidable or the court may set it aside or enforce</i> it in a modified form.
POSITION OF BENEFITS RECEIVED	In case of coercion where the contract is rescinded by the aggrieved party, as per section 64, <i>any benefit received has to be restored back to the other party.</i>	<i>The court has the discretion to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.</i>

DIFFERENCE BETWEEN FRAUD AND MISREPRESNTATION

BASIS	FRAUD	MISREPRESNTATION
INTENTION	To <i>deceive the other party</i> by hiding the truth	There is <i>no such intention</i> to deceive the other party.
KNOWLEDGE OF TRUTH	<i>The person making the suggestion</i> believes that the statement as <i>untrue</i>	The person making the suggestion <i>believes that the statement as true, although it is not true.</i>
RECESSION OF THE CONTRACT AND CLAIM FOR DAMAGES	The injured party <i>can repudiate the contract and claim damages.</i>	The injured party is entitled to <i>repudiate the contract or sue for restitution but cannot claim the damages.</i>
MEANS TO DISCOVER THE TRUTH	<i>The party using the fraudulent act cannot secure or protect himself</i> by saying that the injured party had means to discover the truth	<i>Party can always plead</i> that the injured party had the means of discover the truth.

LEGAL EFFECTS OF AGREEMENTS WITHOUT FREE CONSENT

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

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

EXCEPTION: *If such consent was caused by misrepresentation or by silence, fraudulent, the contract is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.*

Where a party to contract commits fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the later.

MISTAKE: Mistake may be defined as innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either bilateral or unilateral.

Bilateral mistake is when both the parties to a contract are under a mistake.

Unilateral mistake is when only one party to a contract is under a mistake.

EFFECT OF MISTAKE ON VALIDITY OF A CONTRACT:

It may be of two kinds-

- ♥ **MISTAKE OF LAW:** A mistake of law does not render a contract void as one cannot take excuse of ignorance of the law of his own country. But if the mistake of law is caused through the inducement of another, the contract may be avoided. **Mistake of foreign law is excusable** and is treated like a mistake of fact. Contract may be avoided on such mistake.
- ♥ **MISTAKE OF FACT:** Where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual 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.**

LEGALITY OF OBJECT AND CONSIDERATION

The consideration or object of an agreement is lawful, **unless-**

- ♦ **When consideration or object is forbidden by law:** Acts forbidden by law are those which are punishable under any statute as well as those prohibited by regulations or orders made in exercise of the authority conferred by the legislature.
- ♦ **When consideration or object defeats the provision of law:** The word 'defeat the provision of any law' must be taken as limited to defeating the intention which the law has expressed. The court looks at the real intention of the parties to an agreement. If the intention of the parties is to defeat the provision of law, the court will not enforce it.
- ♦ **When it is fraudulent:** Agreement which are entered into to promote fraud are void.
- ♦ **When consideration defeats any rule for the time being in force in India.**
- ♦ **When consideration involves injury to the person or property of another:** The general term "injury" means criminal or wrongful harm.
- ♦ **When consideration is immoral (unlawful).**
- ♦ **when consideration is opposed to public policy:** Some of the agreements which are held to be opposed to public policy are-
 - ♣ **Trading with enemy:**
 - ♣ **Stifling prosecution:** An agreement to stifle prosecution i.e. "agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void.
 - ♣ **Maintenance and Champerty:** Maintenance is an agreement in which a person promises to maintain suit in which he has no interest. Champerty is an agreement in which a person agrees to assist another in litigation in exchange of a promise to

hand over a portion of the proceeds of the action. The agreement for supplying funds by way of maintenance or champerty is valid unless

(a) *It is unreasonable so as to be unjust to other party or*

(b) *It is made by a malicious motive like that of gambling in litigation or oppressing other party by encouraging unrighteous suits and not with the bonafide object of assisting a claim believed to be just.*

- ♣ Traffic relating to public offices: An agreement to traffic in public office is opposed to public policy, *as it interferes with the appointment of a person best qualified for the service of the public.* Public policy requires that there should be no consideration for the appointment to an office in which the public is interested.
- ♣ Agreement tending to create monopolies.
- ♣ Marriage brokerage agreement.
- ♣ Interference with the court of justice: *An agreement whose objects is to induce any judicial officer of the state to act partially or corruptly is void*, as it is opposed to public policy.
- ♣ Interest against obligations.
- ♣ Consideration unlawful in part: if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, the agreement is void.

VOID AGREEMENTS (EXPRESSLY DECLARED VOID AGREEMENTS)

- ♠ AGREEMENT IN RESTRAINT OF MARRIAGE: In case of minor it is valid.
- ♠ AGREEMENT IN RESTRAINT OF TRADE: An agreement by which any person is restrained from exercising lawful profession, trade or business of any kind, is to that extent void. *But this rule is subject to the following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid.* The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.
- ♠ AGREEMENT IN RESTRAINT OF LEGAL PROCEEDING: An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.
However, there are certain exceptions to the above rule:
 - (i) *A contract by which the parties agree that any dispute between them in respect of any subject shall be referred to arbitration and that only the amount awarded in such arbitration shall be recoverable is a valid contract.*
 - (ii) *Similarly, a contract by which the parties agree to refer to a arbitration any question between them which has already arisen or which may arise in future, is valid; but such a contract must be in writing.*
- ♠ AGREEMENT – THE MEANING OF WHICH IS UNCERTAIN.

♣ **WAGERING AGREEMENT:** essential of a Wager

- There must be a **promise to pay money or money's worth**.
- Promise must be **conditional on an event happening or not happening**.
- There must be **uncertainty** of event.
- There must be **two parties, each party must stand to win or lose**.
- There must be **common intention** to bet at the timing of making such agreement.
- **Parties should have no interest** in the event except for stake.

TRANSACTION SIMILAR TO WAGERING (gambling)

♥ Lottery transactions.

♥ Crossword puzzles and competitions

♥ Speculative transaction: An agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day, is a gambling and hence void.

♥ Horse race transactions.

TRANSACTION RESEMBLING WITH WAGERING TRANSACTION BUT ARE NOT VOID

- ♦ Chit fund: In case of a chit fund, a certain number of persons decide to contribute a fixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- ♦ Commercial transactions or share market transactions: In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- ♦ Games of skill and athletic competition.
- ♦ A contract of insurance.

DISTINCTION BETWEEN CONTRACT OF INSURANCE AND WAGERING AGREEMENT

BASIS	CONTRACT OF INSURANCE	WAGERING AGREEMENT
MEANING	It is a contract to indemnify the loss	It is a promise to pay money or money's worth on the happening or non-happening of an uncertain event.
CONSIDERATION	The crux of insurance contract is the mutual consideration (premium and compensation)	There is no consideration between the two parties. There is just gambling for money.
INSURABLE INTEREST	Insured party has insurable interest in the life or property sought to be insured	There is no property in case of wagering agreement. There is betting on other's life and properties.
CONTRACT OF INDEMNITY	Except life insurance, the contract of insurance indemnifies the insured	Loser has to pay the fixed amount on the happening of uncertain event.

	<i>person against loss.</i>	
ENFORCEABILITY	It is <i>valid and enforceable</i>	It is <i>void and unenforceable</i> agreement.
PREMIUM	Calculation of premium is <i>based on scientific and actuarial calculations of risks.</i>	<i>No such logical calculations</i> are required in case of wagering agreement.
PUBLIC WELFARE	They are <i>beneficial to the society</i>	They have been <i>regarded as against the public welfare.</i>

UNIT-4:- PERFORMANCE OF CONTRACTS

OBLIGATION OF PARTIES TO CONTRACTS (SECTION 37)

It is the primary duty of each party to a contract to either perform or offer to perform his promise. He is absolved from such a responsibility only when a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

ACTUAL PERFORMANCE: *Where a party to a contract has done what he had undertaken to do or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed (dono party apne apne obligations kar chuke hai).*

OFFER TO PERFORM OR ATTEMPTED PERFORMANCE OR TENDER OF PERFORMANCE: *Promisor offers to perform his obligations but the promisee refuses to accept the performance.*

BY WHOM A CONTRACT MAY BE PERFORMED

PERSON BY WHOM PROMISE IS TO BE PERFORMED

- ♣ **Promisor himself:** As per the intention of the contract if it seems then *promisor should himself perform*. If contract involves exercise of personal skill or diligence or of personal confidence then promisor.
- ♣ **Agent:** Person competent to perform it.
- ♣ **Legal representative:** *Where a contract involves the use of personal skills or is founded on personal confidence comes to end on the death of the promisor.* In other cases legal representative should perform. But his liability is limited to the value of the property they inherit.
- ♣ **Third person:** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
- ♣ **Joint promisors:** *All such persons must jointly fulfil the promise.* If anyone dies then his legal representative will perform.

DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT

SUCCESSION: When the benefits of a contract are succeeded to or by the process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. *The liability of the son will be limited to the extent of the property inherited by him.*

ASSIGNMENT: *Benefit of a contract can only be assigned but not the liabilities there under.* This is because when the liability is assigned, a third party gets involved therein.

EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, *then the promisor is not responsible for non performance, nor does he thereby lose his rights under the contract.*

Every such offer must fulfil certain conditions:

- ♠ It must be **unconditional**.

- ♣ It must be made at a *proper time and place*, and under such circumstances as may be prescribed. Promisor must have ability and willingness to perform.
- ♣ If the offer to deliver anything to the promisee, then the *promisee must have a reasonable opportunity of seeing that*.

An offer to one of several joint promises has the same legal consequences as an offer to all of them.

EFFECT OF A REFUSAL OF PARTY TO PERFORM PROMISE

THE TWO RIGHTS ACCRUE TO THE AGGRIEVED PARTY:

- ♥ To *terminate* the contract
 - ♥ To indicate by words or by conduct that he is *interested in its continuance*.
- In case the promisee *decides to continue* the contract, *he would not be entitled to put an end to the contract on this ground subsequently*. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

LIABILITY OF JOINT PROMISOR & PROMISEE

All the promisor or promisee or their legal representative.

ANY ONE OF JOINT PROMISORS MAY BE COMPELLED TO PERFORM: 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: 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: Release of one joint promise will not release other joint promise from his responsibility.

RIGHT OF JOINT PROMISEES: Can recover from joint promisor or their legal representative.

TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

- ♦ TIME FOR PERFORMANCE OF PROMISE, WHERE NO APPLICATION IS TO BE MADE AND NO TIME IS SPECIFIED:
The engagement must be performed within a *reasonable time*.
- ♦ TIME AND PLACE FOR PERFORMANCE OF PROMISE, WHERE TIME IS SPECIFIED AND NO APPLICATION TO BE MADE: When the promise is to be performed on a certain day, the promisor may perform it at any time during the *usual hours of business*, on such a day and the place at which the promise ought to be performed.
- ♦ APPLICATION FOR PERFORMANCE ON CERTAIN DAY TO BE AT PROPER TIME AND PLACE: It is the duty of the promisee to apply for performance at a *proper place and within the usual hours of business*.
- ♦ PLACE FOR THE PERFORMANCE OF PROMISE, WHERE NO APPLICATION TO BE MADE AND NO PLACE FIXED FOR PERFORMANCE: It is the duty of the promisor to apply to the promisee to appoint a *reasonable place* for the performance of the promise.
- ♦ PERFORMANCE IN MANNER OR AT TIME PRESCRIBED OR SANCTIONED BY PROMISEE.

PERFORMANCE OF RECIPROCAL PROMISE

- ♣ PROMISOR NOT BOUND TO PERFORM, UNLESS RECIPROCAL PROMISE READY AND WILLING TO PERFORM: In this case no promisor need to perform his promise *unless the promisee is ready and willing to perform his reciprocal promise.*
- ♣ ORDER OF PERFORMANCE OF RECIPROCAL PROMISES: The order of performance may sometimes be indicated not expressly, but by *the nature of the transactions.*
- ♣ LIABILITIES OF PARTY PREVENTING EVENT ON WHICH THE CONTRACT IS TO TAKE EFFECT: When a contract contains reciprocal promises, and one party to the 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 he may sustain in consequence of the non-performance of the contract.
- ♣ EFFECT OF DEFAULT AS TO THAT PROMISE WHICH SHOULD BE FIRST PERFORMED, IN CONTRACT CONSISTING OF RECIPROCAL PROMISES: *When the promises are reciprocal and dependent.* If the promisor 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.*
- ♣ EFFECT OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL: *Becomes voidable at the option of the promisee.*

EFFECT OF SUCH FAILURE WHEN TIME IS NOT ESSENTIAL

Contract does not become voidable *but promise is entitled to compensation* for any loss occasioned to him by such failure.

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.

- ♣ AGREEMENT TO DO IMPOSSIBLE ACT:
 - (1) INITIAL IMPOSSIBILITY (*impossibility existing at the time of contract*): *The agreement would be void* (if known to the parties or unknown to the parties). But if only known by promisor, then promisee is entitled to claim compensation for any loss suffered on account of non performance.
 - (2) SUBSEQUENT OR SUPERVENING IMPOSSIBILITY (*becomes impossible after entering into contract*): When performance of promise becomes impossible or illegal by *occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, contract becomes void and the parties are discharged.*
- ♣ RECIPROCAL PROMISE TO DO CERTAIN THINGS THAT ARE LEGAL, AND ALSO SOME OTHER THINGS THAT ARE ILLEGAL: *Legal set of promise is valid contract, but the second is a void agreement.*
- ♣ 'ALTERNATIVE PROMISE' ONE BRANCH BEING ILLEGAL: *One branch being legal can be enforced.*

APPROPRIATION OF PAYMENTS:

The payment is appropriated (i.e. adjusted against the debts).

- ♣ APPLICATION OF PAYMENT WHERE DEBT TO BE DISCHARGED IS INDICATED: Where the payment is made 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*.

- ♣ APPLICATION OF PAYMENT WHERE DEBT TO BE DISCHARGED IS NOT INDICATED: 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 its discretion to any lawful debt actually due and its recovery is not barred by the law*.
- ♣ APPLICATION OF PAYMENT WHERE NEITHER PARTY APPROPRIATES: The payment shall be applied in discharge of the debts in *order of time*.

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

- ♥ EFFECT OF NOVATION, RECISSION, AND ALTERATION OF CONTRACT:
 - (a) EFFECT OF NOVATION: *Substitute new contract for old one*. Old contract will be discharged and need not be performed.
 - (b) EFFECT OF RECISSION: *Only the old contract is cancelled and no new contract comes* to exist in its place.
 - (c) EFFECT OF ALTERATION OF CONTRACT: *Contract is also discharged by alteration*. Alteration means change in terms and condition of original agreement but the parties to the contract will remain same.
- ♥ PROMISEE MAY WAIVE OR REMIT PERFORMANCE OF PROMISE: A contract may be discharged by remission.
- ♥ RESTORATION OF BENEFIT UNDER A VOIDABLE CONTRACTS: Where any party to the contract has received any benefit under the contract, he must restore such benefits to the person from whom he has received it.
- ♥ OBLIGATIONS OF PERSON WHO HAS RECEIVED ADVANTAGE UNDER VOID: In such case either the advantage received must be restored back or a compensation, sufficient to put the position prior to contract, should be paid.
- ♥ COMMUNICATION OF RECISSION: Rescission must be communicated to the other party in the same manner as proposal is communicated.
- ♥ EFFECT OF NEGLIGENCE OF PROMISEE TO AFFORD PROMISOR REASONABLE FACILITIES FOR PERFORMANCE: The promisor is excused by such neglect or refusal as to any non performance caused thereby.

DISCHARGE OF CONTRACT

- ♦ DISCHARGE BY PERFORMANCE: Parties to the contract fulfil their obligations arising under the contract with the time and in the manner prescribed. *It can be actual or attempted performance*.
- ♦ DISCHARGE BY MUTUAL AGREEMENT: If the parties to the contract agree to substitute, rescind, remit or alter, *the original contract need not be performed*.
- ♦ DISCHARGE BY IMPOSSIBILITY OF PERFORMANCE: It *could be initial or supervening*. Supervening may be due to
 - (a) *Unforeseen change in law*
 - (b) *Destruction of the subject matter essential to that performance*
 - (c) *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 dangerously malady.*

(d) *Declaration of a war.*

- ◆ DISCHARGE BY LAPSE OF TIME: Contract to be performed *within the specified time*.
- ◆ DISCHARGE BY OPERATION OF LAW: Includes by *death* of the promisor, *by insolvency* etc.
- ◆ DISCHARGE BY BREACH OF CONTRACT: Covered under next chapter
- ◆ PROMISE MAY WAIVE OR REMIT PERFORMANCE OF PROMISE: Contract may be discharged by *remission*.
- ◆ EFFECT OF NEGLIGENCE OF PROMISEE TO AFFORD PROMISOR REASONABLE FACILITIES FOR PERFORMANCE: The promisor is excused by such neglect or refusal as to any non performance caused thereby.
- ◆ MERGER OF RIGHTS: Sometimes, *the inferior rights and the superior rights coincide and meet in one and the same person*. The inferior rights vanish and are not required to be enforced.

UNIT – 5:- 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:

- ♣ **ANTICIPATORY BREACH OF CONTRACT:** An anticipatory breach of contract is a breach of contract occurring *before the time fixed for performance has arrived*. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called anticipatory breach. It can be expressed or implied by the conduct of parties.
EFFECT OF ANTICIPATORY BREACH:
 - ♣ To 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,
 - ♣ 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.
- ♣ **ACTUAL BREACH OF CONTRACT:** It is a case *of refusal to perform the promise on the scheduled date*. Actual breach 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:** The party who suffers from such a breach is entitled to receive, from the party who has broken the contract, *compensation for any loss or damages caused to him by breach. Special damage can be claimed only on a previous notice. No compensation is payable for any remote or indirect loss.*

REMEDIES BY WAY OF DAMAGES OR KIND OF DAMAGES:

- ♦ **GENERAL/ORDINARY DAMAGES:** The party who suffers by such 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 arose in the usual course of things from such breach, or which the parties know, when they made the contract, to be likely to result from breach of it.*
- ♦ **SPECIAL DAMAGES:** Where a party to a contract receives a notice of special circumstances affecting the contract then he will be liable for special damages also.
- ♦ **VINDICTIVE OR EXEMPLARY DAMAGES:** In two cases:
 - ♣ *For breach of promise to marry because it causes injury to his or her feelings; and*
 - ♣ *For wrongful dishonour by a banker of his customer's cheque as it causes loss of credit and reputation of drawer.*
- ♦ **NOMINAL DAMAGES:** The amount may be a rupee or even 10 paise.

- ♦ **DAMAGES FOR DETERIORATION CAUSED BY DELAY:** Damages can be recovered from carrier even without notice. It can be recovered in case of loss of special opportunity for sale.
- ♦ **PRE-FIXED DAMAGES:** It is *also called liquidated damages*. Parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage.

PENALTY AND LIQUIDATED DAMAGES: As per English law both words have different meaning and Indian law makes no distinction between two words.

DISNTICTION BETWEEN LIQUIDATED DAMAGES AND PENALTY:

- ♣ If the sum payable is *so large as to be far in excess* of the probable damage on breach, it is certainly *a penalty*.
- ♣ 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 penalty* because mere delay in payment is unlikely to cause damage.
- ♣ If the *sum fixed in contract is extravagant or exorbitant, the court will regard it as a penalty* even if, it is termed as liquidated damages in the contract.
- ♣ 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.
- ♣ However *court cannot allow more than the damages as fixed in the contract*.

BESIDES CLAIMING DAMAGES AS A REMEDY FOR THE BREACH OF CONTRACT, THE FOLLOWING REMENDIES ARE ALSO AVAILABLE:

- ♥ **RESCISSION OF CONTRACT:** Other party can claim compensation for any damages that he may have suffered.
- ♥ **QUANTAM MERUIT:** As much as the party doing the service has deserved. For the application of this doctrine, two conditions must be fulfilled:
 - ♦ *It is only available if the original contract has been discharged.*
 - ♦ *The claim must be brought by a party not in default.*

THE CLAIM FOR QUANTUM MERUIT ARISES IN THE FOLLOWING CASES:

- *When an agreement is discovered to be void or when a contract becomes void.*
- *When something is done without any intention to do so gratuitously.*
- *Where there is an express or implied contract to render services but there is no agreement as to remuneration.*
- *When one party abandons or refuses to perform the contract.*
- *Where a contract is divisible and the party not in default has enjoyed the benefit of part performance.*
- *When an indivisible contract for a lump sum is completely performed but badly the person who has performed the can claim the lump sum, but the other party can make a deduction for bad work.*
- ♥ **SUIT FOR SPECIFIC PERFORMANCE:** Where damages are not an adequate remedy *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:** *Court may by an issuing an 'injunction orders'* restrain him from doing what he promised not to do.

UNIT 6:- CONTINGENT CONTRACT AND QUASI CONTRACT

DEFINATION OF CONTINGENT CONTRACT: *"A contract to do or not to do something, if some event, collateral to such contract, does or does not happen".*

Contract of insurance, indemnity and guarantee fall under this category.

MEANING OF COLLATERAL EVENT: *"An event which is neither a performance directly promised as part of the contract, nor the whole of the consideration for a promise".*

ESSENTIALS OF A CONTINGENT CONTRACT

- ♣ *The performance of a contingent contract would depend upon the happening or non-happening of some event or condition.*
- ♣ *The event referred to is collateral to the contract:* the event is not part of the contract.
- ♣ *The contingent event should not be a mere 'will' of the promisor.*
- ♣ *The event must be uncertain:* where the event is certain or bound to happen, the contract is due to be performed, then it is not contingent contract.

RULES RELATING TO ENFORCEMENT

- ♦ **ENFORCEMENT OF CONTRACT CONTINGENT ON AN EVENT HAPPENING:** Where a contingent contract is made to do or not to do anything if an uncertain future event happens, *it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contract becomes void.*
- ♦ **ENFORCEMENT OF CONTRACT CONTINGENT ON AN EVENT NOT HAPPENING:** Where a contingent contract is made to do or not do anything if an uncertain future event does not happen, *it can be enforced only when the happening of that event becomes impossible and not before.*
- ♦ **A CONTRACT WOULD CEASE TO BE ENFORCEABLE IF IT IS CONTINGENT UPON THE CONDUCT OF A LIVING PERSON WHEN THAT LIVING PERSON DOES SOME THING TO MAKE THE 'EVENT' OR 'CONDUCT' AS IMPOSSIBLE OF HAPPENING:** If a contract is contingent upon as to how a person will act at an unspecified time, *the event shall be considered to have 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.
- ♦ **CONTINGENT ON HAPPENING OF SPECIFIED EVENT WITHIN THE FIXED TIME:** Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, *becomes void if, at the expiration of time fixed, such event has not happened, or it, before the time fixed, such event becomes impossible.*
- ♦ **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.*

- ♦ **CONTINGENT ON AN IMPOSSIBLE EVENT**: Contingent contract to do or not to do anything, if an impossible event happens are void.

DIFFERENCE BETWEEN CONTINGENT CONTRACT AND A WAGERING CONTRACT

BASIS	CONTINGENT CONTRACT	WAGERING CONTRACT
MEANING	<i>Is a contract to do or not to do something with reference to a collateral event happening or not happening.</i>	<i>Is a promise to give money or money's worth with reference to an uncertain event happening or not happening.</i>
RECIPROCAL PROMISE	<i>May not</i> contain reciprocal promise.	It <i>consists of</i> reciprocal promise.
UNCERTAIN EVENT	The event is <i>collateral</i> .	The uncertain event is the core factor.
NATURE OF CONTRACT	<i>May not</i> be wagering nature	Is <i>essential contingent</i> in nature
DOCTRINE OF MUTUALITY OF LOSE AND GAIN	Is <i>not based</i> on doctrine of mutability of lose and gain.	It is <i>a game, losing and gaining alone matters.</i>
EFFECT OF CONTRACT	<i>Valid</i>	<i>Void</i>

QUASI CONTRACTS

Sometimes the law implies a promise obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no genuine consent, lawful consideration, etc. And in fact neither agreement nor promise. Such cases are not contracts in the strict sense, but the court recognises them as **RELATIONS RESEMBLING THOSE OF CONTRACTS** and enforce them as if they are contracts. Quasi contracts are based on principles of equity, justice and good conscience. A quasi or constructive contracts rests upon the maxims, *"No man just grow rich out of another person loss"*. In India it is called as **"CERTAIN RELATION RESEMBLING THOSE CREATED BY CONTRACTS"**.

FEATURES OF QUASI CONTRACTS:

- ♣ *In the first place*, such a right is always a right to money and generally, through not always, to a liquidated sum of money.
- ♣ *Secondly*, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
- ♣ *Thirdly*, it is a right which is available not against all the world, but against a particular person or persons only, so that in this respect it resembles a contractual right.

CASES DEEMED AS QUASI CONTRACT

- ♥ **CLAIM FOR NECESSARIES SUPPLIED TO PERSONS INCAPABLE OF CONTRACTING**: The person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

- ♥ **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.
- ♥ **OBLIGATION OF A 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 gratuitously and such other person enjoys the benefits thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the things so done or delivered.
- ♥ **RESPONSIBILITY OF FINDER OF GOODS:**
 - 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.*
- ♥ **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.

DIFFERENCE BETWEEN QUASI CONTRACTS AND CONTRACTS

BASIS	QUASI CONTRACT	CONTRACT
ESSENTIAL FOR THE VALID CONTRACTS	Absent	Present
OBLIGATIONS	Imposed by law	Created by the consent of the parties

IMPORTANT CASE LAW

CARLILL Vs. CARBOLIC SMOKE BALL CO.

Fact of the case:

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 Ball 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.

Decision:

Held, she could recover the amount as by using the smoke balls she had accepted the offer. In terms of Sec. 8 of the Indian Contract 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.

LALMAN SHUKLA Vs. GAURI DUTT

Fact of the case:

Gauri Dutt sent his servant Lalman to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. Lalman traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it.

Decision:

Held, he has not entitled to the reward, as he did not know the offer. Section 4 of the Indian Contract Act states that the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

In Lalman case, the defendant's nephew absconded from home. The plaintiff who was defendant's servant was sent to search for the missing boy.

After the plaintiff had left in search of the boy, the defendant announced a reward of ₹ 501 to anyone who might find out the boy. The plaintiff who was unaware of this reward, was successful in searching the boy. When he came to know of the reward, which had been announced in his absence, he brought an action against

the defendant to claim this reward. It was held that since the plaintiff was ignorant of the offer of reward, his act of bringing the lost boy did not amount to the acceptance of the offer and therefore he was not entitled to claim the reward.

BOULTON Vs. JONES

Fact of the case:

Boulton had taken over the business of one Brocklehurst, with whom Jones had previous dealings. Jones sent an order for goods to Brocklehurst, which Boulton supplied without informing Jones that the business had changed hands. When Jones found out that the goods had not come from Brocklehurst, he refused to pay for them and was sued by Boulton for the price.

Decision:

Jones is not liable to pay for the goods. It is a rule of law that offer made to a specific / ascertained person can be accepted only by that specified person.

HARVEY Vs. FACIE

Fact of the case:

In this case, Privy Council briefly explained the distinction between an offer and an invitation to offer. In the given case, the plaintiffs through a telegram asked the defendants two questions namely,

- (i) Will you sell us Bumper Hall Pen? And
- (ii) Telegraph lowest cash price.

The defendants replied through telegram that the "lowest price for Bumper Hall Pen is £900". The plaintiffs sent another telegram stating "we agree to buy Bumper Hall Pen at £900". However, the defendants contending that they had made an offer to sell the property at £900 and therefore they are bound by the offer.

Decision:

Held that the mere statement of the lowest price at which the vendor would sell contained no implied contract to sell to the person who had enquired about the price.

MAC PHERSON Vs. APPANNA

Fact of the case:

The owner of the property had said that he would not accept less than ₹ 6000/- for it.

Decision:

It was held that this statement did not indicate any offer but indicated only an invitation to offer.

HARRIS Vs. NICKERSON

Fact of the case:

An auctioneer advertised in a newspaper that a sale of office furniture will be held on a particular day. Plaintiff (Harris) with the intention to buy furniture came from a distant place for auction but the action was cancelled.

Decision:

It was held that plaintiff cannot file a suit against the auctioneer for his loss of time and expenses because the advertisement was merely a declaration of intention to hold auction and not an offer to sell. The auctioneer (Nickerson) does not contract with any one who attends the sale. The auction is only an advertisement to sell but the items are not put for sale though persons who have come to the auction may have the intention to purchase.

PHARMA-CEUTICAL SOCIETY OF GREAT BRITAIN Vs. BOOTS CASH CHEMISTS LTD.

Fact of the case:

The goods were displayed in the shop for sale with price tags attached on each article and self service system was there. One customer selected the goods but the owner refused to sell.

Decision:

In this case, it was held that display of goods alongwith price tags merely amounts to invitation to treat and therefore if an intending buyer is willing to purchase the goods at a price mentioned on the tag, he makes an offer to buy the goods. Thus, the shopkeeper has the right to accept or reject the same. The contract would

arise only when the offer is accepted. Hence there was no contract and customer had no rights to sue the owner.

FELTHOUSE Vs. BINDLEY

Fact of the case:

F offered by letter to buy a nephews horse, saying; "if I hear no more about it, I shall consider the horse mine." The nephew did not reply but he told an auctioneer not to sell that particular horse as he had sold it to his uncle. By mistake, the auctioneer sold the horse. F sued for conversion against his nephew.

Decision:

Held, F could not succeed as his nephew had not communicated acceptance and there was no contract.

NEALE Vs. MERRET

Fact of the case:

M offered to sell his land to N for £280. N replied purporting to accept the offer but enclosed a cheque for £80 only. He promised to pay the balance of £200 by monthly installments of £50 each.

Decision:

It was held that N could not enforce his acceptance because it was not an unqualified one.

BROGDEN Vs. METROPOLITAN RAIWAY CO.

Fact of the case:

Brogden a supplier, sent a draft agreement relating to the supply of coal to the manager of railway co. viz, metropolitan railway for his acceptance. The manager wrote the word "Approved" on the same and put the draft agreement in the drawer of the table intending to send it to the company's solicitors for a formal contract to be drawn up. By an over sight the draft agreement remained in drawer.

Decision:

Held, that there was no contract as the manager had not communicated his acceptance to the supplier, Brogden.

LILLY WHITE Vs. MANNUSWAMY

Fact of the case:

Plaintiff delivered some clothes to drycleaner for which she received a laundry receipt containing a condition that in case of loss, customer would be entitled to claim 15% of the market price of value of the article, Plaintiff lost her new saree.

Decision:

Held, the terms were unreasonable and plaintiff was entitled to recover full value of the saree from the drycleaner. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt.

CHINNAYYA Vs. RAMAYYA

Fact of the case:

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 maternal uncle and agreeing to pay him annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it.

Decision:

It was held that there was sufficient consideration for the uncle to recover the money from the daughter.

DURGA PRASED Vs. BALDEO

Fact of the case:

D (defendant) promised to pay to P (plaintiff) a certain commission on articles which would be sold through their agency in a market. Market was constructed by P at the desire of the C (collector), and not at the desire of the D (promisor).

Decision:

D was not bound to pay commission as it was without consideration and hence void.

MOHORI BIBI Vs. DHARMO DAS GHOSE

Fact of the case:

A, a minor borrowed ₹ 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and filed a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled.

Decision:

It was held that a mortgage by a minor was void and B was not entitled to repayment of money.

SAIN DAS Vs. RAM CHAND

Fact of the case:

Where there was a joint purchase by two purchasers, one of them was minor.

Decision:

It was held that the vendor could enforce the contract against the major purchaser and not the minor.

WORD Vs. HOBBS

Fact of the case:

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.

Decision:

Held there was no fraud

PEEK Vs GURNEY

Fact of the case:

The prospectus issued by a company did not refer to the existence of a document disclosing liabilities. The impression thereby created was that the company was a prosperous one, which actually was not the case.

Decision:

Held the suppression of truth amounted to fraud.

REGIER Vs CAMPBELL STAURT

Fact of the case:

A broker was asked to buy shares for client. He sold his own shares without disclosing this fact.

Decision:

Held that 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.

HADLEY Vs BAXENDALE

Fact of the case:

The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, D delayed the delivery of the crankshaft so the mill idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering of the broken part but also for loss of profits suffered by the mill for not having been worked.

Decision:

The court held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.

SHYAMLAL Vs STATE OF U.P

Fact of the case:

'S' a government servant was compulsorily retired by the government. He filed a writ petition and obtained an injunction against the order. He was reinstated and was paid salary but was given no work and in the mean time government went on appeal.

Decision:

The appeal was decided in favour of the government and 'S' was directed to return the salary paid to him during the period of reinstatement.

HOLLINS Vs HOWLER L.R. & H.L.,

Fact of the case:

H' picked up a diamond on the floor of 'F's shop and handed over the same to 'F' to keep till the owner was found. In spite of the best efforts, the true owner could not be traced. After the lapse of some weeks, 'H' tendered to 'F' the lawful expenses incurred by him and requested to return the diamond to him. 'F' refused to do so.

Decision:

Held that 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.

TRIKAMDAS Vs BOMBAY MUNICIPAL CORPORATION

Fact of the case:

'T' was traveling without ticket in a tram car and on checking he was asked to pay ₹5/- as penalty to compound transaction. T filed a suit against the corporation for recovery on the ground that it was extorted from him.

Decision:

The suit was decreed in his favour.

INDIAN CONTRACT ACT SECTIONS LIST

SECTION NO.	TOPIC
2(h)	Contract
2(e)	Agreement
2(b)	Promise/acceptance
10	Essential of valid contract
2(j)	Void contract
2(i)	Voidable contract
2(a)	Proposal/offer
2(d)	Consideration
3	Mode of acceptance
4	Communication of offer
5	Revocation of proposal
11	Competent to contract
12	Person of sound mind
13	Free consent
15	Coercion
16	Undue influence
17	Fraud
18	Misrepresentation
19	Effect of coercion
19A	Power to set aside contract induced by undue influence
Explanation to section 19	Discovering the truth with ordinary diligence
23	Agreement the consideration or object of which is unlawful
24	Agreement the consideration or object of which is unlawful in parts
25	Agreement without consideration
26	Agreement in restraint of marriage
27	Agreement in restraint of trade
28	Agreement in restraint of legal proceeding
29	Agreement the meaning of which is uncertain
30	Wagering agreement
31	Contingent contract
32	Enforcement of contracts contingent on an event happening
33	Enforcement of contracts contingent on an event not happening
34	A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does something to make the 'event' or conduct as impossible of happening

35	Contingent on happening of specified event within the fixed time Contingent on specified event not happening within fixed time
36	Contingent on an impossible event
37	Obligations of parties to contracts
38	Effect of refusal to accept offer of performance
39	Effect of refusal of party to perform wholly
40	Person by whom promise is to be performed
41	Effect of accepting performance from third person
42	Devolution of Joint liabilities
43	Any one of joint promisors may be compelled to perform
44	Effect of release of one joint promisor
45	Devolution of joint liability
46	Time for performance of promise, where no application is to be made and no time is specified
47	Time and place for performance of promise, where time is specified and no application to be made
48	Application for performance on certain day to be at proper time and place
49	Place for the performance of promise, where no application to be made and no place fixed for performance
50	Performance in manner or at time prescribed or sanctioned by promisee
51	Promisor not bound to perform, unless reciprocal promise ready and willing to perform
52	Order of performance of reciprocal promises
53	Liability of party preventing event on which the contract is to be effect
54	Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises
55	Effects of failure to perform at a time fixed in a contract in which time is essential
56	Agreement to do impossible act (initial and subsequent)
57	Reciprocal promise to do certain things that are legal, and also some other things that are illegal
58	'Alternative promise' one branch being illegal
59	Application of payment where debt to be discharged is indicated
60	Application of payment where debt to be discharged is not indicated
61	Application of payment where neither party appropriates
62	Effect of novation, rescission, and alteration of contract
63	Promisee may waive or remit performance of promise
64	Restoration of benefit under a voidable contract
65	Obligations of person who has received advantage under void agreement

	or contract that becomes void
66	Communication of rescission
67	Effects of neglect of promisee to afford promisor reasonable facilities for performance
68	Claim for necessities supplied to persons incapable of contracting
69	Payment by an interested person
70	Obligation of person enjoying benefits of non-gratuitous act
71	Responsibility of finder of goods
72	Money paid by mistake or under coercion
73	Compensation for loss or damages caused by breach of contract
74	Penalty and liquidated damages
75	Party rightfully rescinding contract, entitled to compensation