Indian Contract Act, 1872

Chapter 2A

Unit 1	**Nature of Contract**
	Meaning & Essentials of Valid Contract Types of Contract Meaning & Essentials of Valid Offer Types of Offer Meaning & Essentials of Valid Acceptance Rules Regarding Communication of Offer & Acceptance
Unit 2	**Consideration**
	Meanings & definition Essentials of Valid Consideration Rule of 'No Consideration, No Contract' Validity of Agreements without Consideration Doctrine of Privity of Contract & Its Exceptions
Unit 3	**Other Essential Elements of Valid Contract**
	Capacity to Contract Free Consent Lawful Consideration & Object Should not be Expressly Declared as void Agreements Opposed to Public Policy
Unit 4	**Performance of Contract**
	Actual & Tendered Performance Who can Perform the Contract? Time & Place of Performance Rules regarding Performance of Reciprocal Promises Appropriation of Payments Discharge of Contract
Unit 5	**Breach of Contract & Its Remedies**
	Actual & Anticipatory Breach Remedies for Breach of Contract Penalty vs. Liquidated Damages
Unit 6	**Contingent & Quasi Contract**
	Contingent Contract Rules Relating to Enforcement of Contingent Contract Quasi Contract Cases deemed as Quasi-Contracts

The Law of contract: Introduction

The law relating to contract is governed by the Indian Contract Act, 1872. The Act came into force on the first day of September, 1872. The preamble says that it is an Act "to define and amend certain parts of the law relating to contract". It extends to the whole of India.

The Indian Contract Act mostly deals with the general principles and rules governing contracts. The Act is divisible into two parts. The first part (Section 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature. The second part (Sections 124-238) deals with certain special kinds of contracts, namely contracts of Indemnity and Guarantee, Bailment, Pledge, and Agency.

Unit 1 : Nature of Contract

Unit Overview

- **Meaning & Elements of Contract**
  - **Agreement**
  - **Enforceability at Law**
- **Essentials of a valid Contract**
- **Types of Contracts**
- **Offer**
  - **Essential of a valid offer**
  - **Offer vs. Invitation to Offer**
  - **Types of Offer**
- **Acceptance**
  - **Essential of a valid Acceptance**
  - **Rules Regarding Communication of Offer & Acceptance**
  - **Revocation of Offer & Acceptance**

1. What is a Contract?

The Indian Contract Act has defined contract in **Section 2(h) as "an agreement enforceable by law".** These definitions indicate that a contract essentially consists of two distinct parts.

(i) an agreement, and
(ii) its enforceability by law.

(i) Agreement – The term 'agreement' given in **Section 2(e) of the Act is defined as- "every promise and every set of promises, forming the consideration for each other".** To have an insight into the definition of agreement, we need to understand promise.

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

Agreement = Offer/Proposal + Acceptance

(ii) Enforceability by law – An agreement to become a contract must give rise to a legal obligation which means a duly enforceable by law.

Contract = Agreement + Enforceability at Law

On elaborating the above two concepts, it is obvious that contract comprises of an agreement which is a promise or a set of reciprocal promises, that a promise is the acceptance of a proposal giving rise to a binding contract. Further, section 2(h) requires an agreement to be worthy of being enforceable by law before it is called 'contract'. Where parties have made a binding contract, they created rights and obligations between themselves.

Example: A agrees with B to sell car for Rs. 2 lacs to B. Here A is under an obligation to give car to B and B has the right to receive the car on payment of Rs. 2 lacs and also B is under an obligation to pay Rs. 2 lacs to A and A has a right to receive Rs. 2 lacs.

So Law of Contract deals with only such legal obligation which has resulted from agreements. Such obligation must be contractual in nature. However some obligations are outside the purview of the law of contract.

Example: An obligation to maintain wife and children, an order of the court of law etc. These are status obligations and so out of the scope of the Contract Act.

Contract How Made?

Difference between Agreement & Contract

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

2. Essentials of A Valid Contract:

As given by Section 10 of Indian Contract Act, 1872		Not given by Section 10 but are also considered essential	
1	Agreement	**1**	Two parties
2	Free consent	**2**	Intention to create legal relationship
3	Competency of the parties	**3**	Fulfillment of legal formalities
4	Lawful consideration	**4**	Certainty of meaning
5	Legal object	**5**	Possibility of performance
6	Not expressly declared to be void		

According to Section 10 of the Indian Contract Act, 1872, the following are the essential elements of a Valid Contract:

1. Offer and Acceptance or an agreement: An agreement is the first essential element of a valid contract. According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises, forming consideration for each other, is an agreement" and according to Section 2(b) "A proposal when accepted, becomes a promise". So we can say that an agreement is an outcome of offer and acceptance.

Example: Mr. A asked Mr. B "Do you want to Purchase my car for Rs. 2,00,000 ?" Mr. B Replied "Yes". Here Mr. A has made an Offer which is accepted by B and hence making a valid Acceptance as an Agreement between both the parties.

2. Free Consent: Two or more persons are said to consent when they agree upon the same thing in the same sense. This can also be understood as identity of minds in understanding the terms viz. 'consensus ad idem'. Further such consent must be free. Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud or, misrepresentation or mistake. When consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Example: A threatened to shoot B if he (B) does not lend him Rs. 2000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

3. Capacity of the parties: Capacity to contract means the legal ability of a person to enter into a valid contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract who (a) is of the age of majority according to the law to which he is subject and (b) is of sound mind and (c) is not otherwise disqualified from contracting by any law to which he is subject. A person competent to contract must fulfill all the above three qualifications.

Example: A, a minor borrowed Rs. 20,000 from B. It was held that a loan by a minor was void and B was not entitled to repayment of money.

4. Consideration: It is referred to as 'quid pro quo' i.e. 'something in return'. A valuable consideration in the sense of law may consist either in some right, interest, profit, or benefit accruing to one party, or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.

Example: A agrees to sell his books to B for Rs. 100, B's promise to pay Rs. 100 is the consideration for A's promise, and A's promise to sell the books is the consideration for B's promise.

5. Lawful Consideration and Object: The consideration and object of the agreement must be lawful. Section 23 states that consideration or object is not lawful if it is prohibited by law, or it is such as would defeat the provisions of law, if it is fraudulent or involves injury to the person or property of another or court regards it as immoral or opposed to public policy.

Example: 'A' promises to drop prosecution instituted against 'B' for robbery and 'B' promises to restore the value of the things taken. The agreement is void, as its object is unlawful.

6. Not expressly declared to be void: The agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

Example: Threat to commit murder or making/publishing defamatory statements or entering into agreements which are opposed to public policy are illegal in nature. Similarly any agreement in restraint of trade, marriage, legal proceedings, etc. is classic examples of void agreements.

Since section 10 is not complete and exhaustive, so there are certain others sections which also contain requirements for an agreement to be enforceable. Thus, in order to create a valid contract, the following elements should be present:

1. Two Parties: One cannot contract with himself. A contract involves at least two parties- one party making the offer and the other party accepting it. A contract may be made by natural persons and by other persons having legal existence e.g. companies, universities etc. It is necessary to remember that identity of the parties be ascertainable.

2. Parties must intend to create legal obligations: There must be an intention on the part of the parties to create legal relationship between them. Social or domestic types of agreements are not enforceable in court of law and hence they do not result into contracts.

Example: A husband agreed to pay to his wife certain amount as maintenance every month while he was abroad. Husband failed to pay the promised amount. Wife sued him for the recovery of the amount. Here in this case wife could not recover as it was a social agreement and the parties did not intend to create any legal relations.

3. Other Formalities to be complied with in certain cases: In case of certain contracts, the contracts must be in writing, e.g. Contract of Insurance is not valid except as a written contract. Further, in case of certain contracts, registration of contract under the laws which is in force at the time, is essential for it to be valid, e.g. in the case of immovable property.

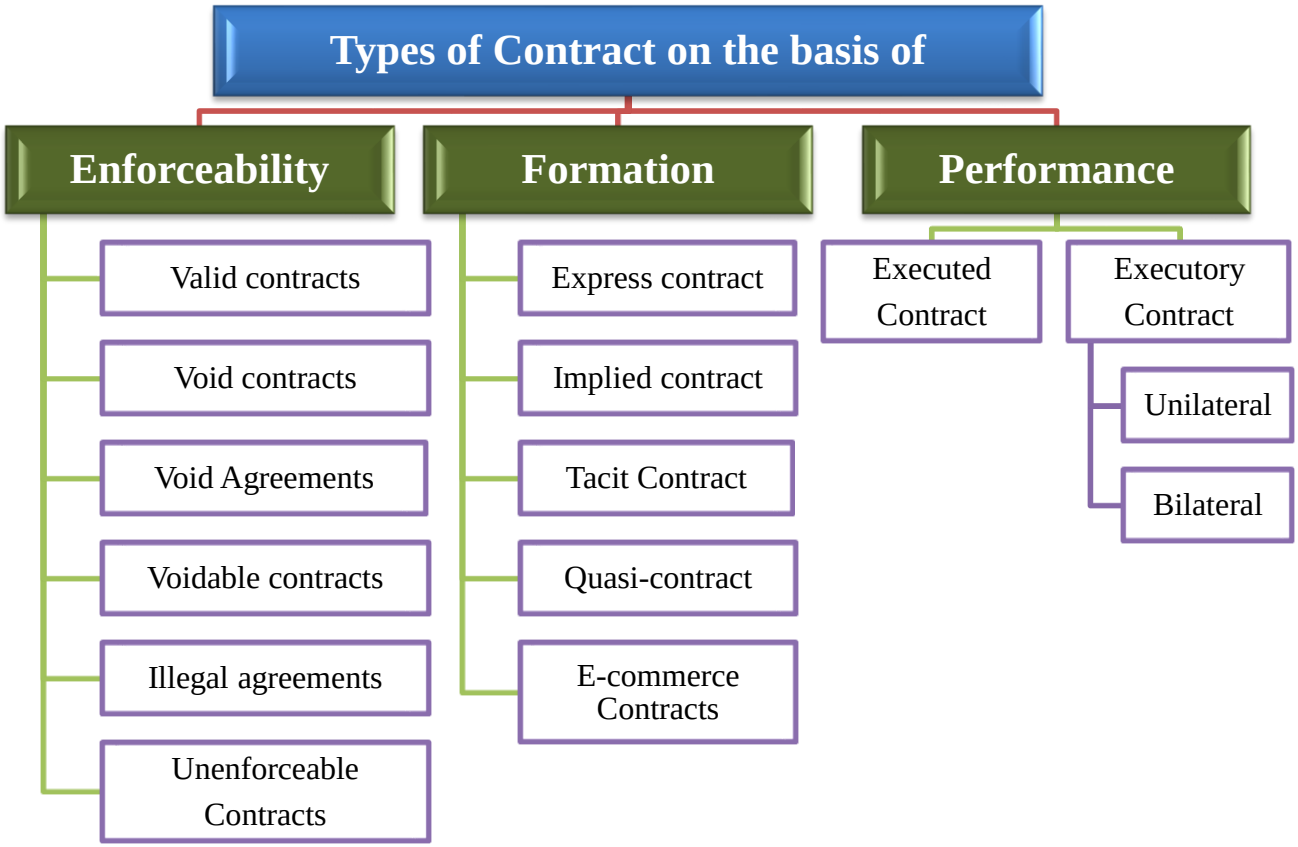
4. Certainty of meaning: The agreement must be certain and not vague or indefinite.

Example: A agrees to sell to B a hundred tons of oil. There is nothing certain in order to show what kind of oil was intended for.

5. Possibility of performance of an agreement: The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.

Example: A agrees with B to discover treasure by magic. The agreement cannot be enforced as it is not possible to be performed.

3. Types of Valid Contract:



I. On the basis of the Enforceability:

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 void contract is one which cannot be enforced by a court of law.

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

3. Void agreement: Void agreements are those agreements which are not enforced by court of law. Thus the parties to the contract do not get any legal redress in the case of void agreements. Void agreements arise due to the non-fulfillment of one or more conditions laid down by Section 10 of the Indian contract Act.

Example: A, a minor borrowed Rs. 10,000 from B. It was held that a loan by a minor was void and B was not entitled to repayment of money. It is Void-ab-initio i.e. void from the beginning.

4. 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 other or others is a voidable

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

Example: A threatens B to sell his (B's) car worth Rs. 5 Lakhs for Rs. 2 Lakhs, If not then A will kill B's son.

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

Example: Contract to sell Smuggled cocaine is Illegal.

6. 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.

Example: Mr. A made a Promissory Note and delivered to Mr. B but didn't sign it, and hence is it not enforceable in the court of Law.

II. On the basis of the formation of contract

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

Example: A tells B on telephone that he offers to sell his house for Rs. 2 lakhs and B in reply informs A that he accepts the offer, this is an express contract.

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

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

3. Tacit Contracts: The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written. It is not a separate form of contract but falls within the scope of implied contracts.

Example: When cash is withdrawn by a customer of a bank from the automatic teller machine [ATM].

4. Quasi-Contract: A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances. The law creates and

enforces legal rights and obligations when no real contract exists. Such obligations are known as quasi-contracts. In other words, it is a contract in which there is no intention on part of either party to make a contract but law imposes a contract upon the parties.

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

5. E-Contracts: When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts. In electronic commerce, different parties/persons create networks which are linked to other networks through ED1 - Electronic Data Inter change. This helps in doing business transactions using electronic mode. These are known as EDI contracts or Cyber contracts or mouse click contracts.

Example: Purchasing Goods from online websites like Amazone, Flipkart, Etc. Also booking Movie tickets online.

III. On the basis of the performance of the contract

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

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

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

Example: Where G agrees to take the tuition of H, a pre-engineering student, from the next month and H in consideration promises to pay G Rs. 1,000 per month, the contract is executory because it is yet to be carried out. Unilateral or Bilateral are kinds of Executory Contracts and are not separate kinds.

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

Example: Student have paid whole of the fees but teacher is still pending to complete the syllabus.

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

Example: Student have not paid whole of the fees, and teacher is also pending to complete the syllabus.

4. Proposal / Offer:

Definition:

According to Section 2(a) of the Indian Contract Act, 1872, "when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal".

Meaning:

Proposal is also termed as an offer. The word 'proposal' is synonymous with the English word "offer". An offer is a proposal by one person, whereby he expresses his willingness to enter into a contractual obligation in return for a promise, act or forbearance.

The person making the proposal or offer is called the proposer or offeror and the person to whom the proposal is made is called the offeree.

5. Essential of a valid offer:

1. It must be capable of creating legal relations: Offer must be such as in law is capable of being accepted and giving rise to legal relationship. If the offer does not intend to give rise to legal consequences and creating legal relations, it is not a valid offer in the eye of law. A social invitation, even if it is accepted, does not create legal relations because it is not so intended.

Example: Mr. A offered to all his friend to come on Ice-cream treat in the evening, his friend accepted the offer. But such offer is social offer and hence not enforceable in the court of law

Example: Mr. A offered to Ice-cream vendor to supply 200 Kg of Ice-cream on next day for a Function, Vendor accepted the same. Such offer is a Commercial offer and hence valid and enforceable in the court of law

2. It must be certain, definite and not vague: If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.

Example: A offers to sell B 100 quintals of oil, there is nothing whatever to show what kind of oil was intended. The offer is not capable of being accepted for want of certainty.

3. It must be communicated to the offeree: An offer, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it. Unless an offer is communicated, there can be no acceptance by it. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor.

This can be illustrated by the landmark case of **Lalman Shukla v. Gauridutt Facts:**

G (Gauridutt) sent his servant L (Lalman) to trace his missing nephew. He then announced that anybody who traced his nephew would be entitled to a certain reward. L traced the boy in ignorance of this announcement. Subsequently when he came to know of the reward, he claimed it. **Held,** he was not entitled to the reward, as he did not know the offer.

4. It must be made with a view to obtaining the assent of the other party: Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.

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

5. It may be conditional: An offer can be made subject to any terms and conditions by the offeror.

Example: Mr. A offers Mr. B to sell his car for Rs. 2 Laks with a condition that payment shall be made through Cash only. Here, B has to make payment through Cash only to accept the offer; Payment through any other mode like Cheque, NEFT, RTGS will not make the acceptance valid.

6. 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.

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

7. The offer may be either specific or general: Any offer can be made to either public at large or to the any specific person. Any offer made to specific person is a Specific offer, and any offer made to the public at large is General offer.

8. The offer may be express or implied: An offer may be made either by words oral or written or by conduct.

Example: Mr. A gave an offer ot B on Telephone, it is an express offer.

Example: A Bus stopped on a Bus-stop, it is an implied offer.

9. Offer is Different from a mere statement of intention, an invitation to offer, a mere communication of information, A prospectus and Advertisement.

Difference between offer and invitation to make an offer:

In terms of Section 2(a) of the Act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it. On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer. Thus where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms. Hence the only thing that is required is the willingness of the offeree to abide by the terms of offer. In order to ascertain whether a particular statement amounts to an offer or an invitation to offer, the test would be intention with which such statement is made. The mere statement of the lowest price which the vendor would sell contains no implied contract to sell at that price to the person making the inquiry. If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer. Thus the intention to be bound is important factor to be considered in deciding whether a statement is an 'offer' or 'invitation to offer.' Following are instances of invitation to offer to buy or sell:

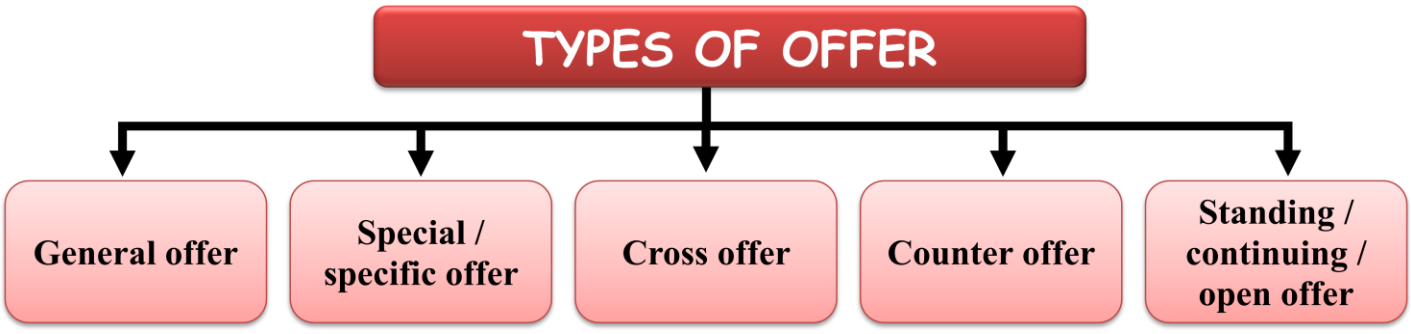
(i) An invitation by a company to the public to subscribe for its shares.

(ii) Display of goods for sale in shop windows.

(iii) Advertising auction sales and

(iv) Quotation of prices sent in reply to a query regarding price.

6. Types of Offer:



1. General offer: It is an offer made to public at large and hence anyone can accept and do the desired act **(Carlill v. Carbolic Smoke Ball Co.).** In terms of Section 8 of the Act, anyone performing the conditions of the offer can be considered to have accepted the offer.

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

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

2. Special/specific offer: When the offer is made to a specific or an ascertained person, it is known as a specific offer. Specific offer can be accepted only by that specified person to whom the offer has been made.

Example: 'A' offers to sell his car to 'B' at a certain cost. This is a specific offer and no one else can accept the same.

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

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

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

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

5. Standing or continuing or open offer: An offer which is allowed to remain open for acceptance over a period of time is known as standing or continuing or open offer.

Example: Tenders that are invited for supply of goods is a kind of standing offer.

7. Acceptance

Definition:

As per Section 2(b) of the Act, 'the term acceptance' is defined as follows: "When the person to whom the proposal is made signifies his assent thereto, proposal is said to be accepted. The proposal, when accepted, becomes a promise".

Meaning:

In simple words when the person to whom offer is made gives his assent (consent) there, he is said to accept the offer so made.

8. Essential of a valid Acceptance:

1. Acceptance can be given only by the person to whom offer is made: In case of a specific offer, it can be accepted only by the person to whom it is made.

Example: If Mr. A has given offer to Mr. B then only Mr. B can accept it, none of the other person can accept it.

2. 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, then it must be accepted accordingly.

Example: 'A' enquires from 'B', "Will you purchase my car for Rs. 2 lakhs?" If 'B' replies "I shall purchase your car for Rs. 2 lakhs, if you buy my motorcycle for Rs. 50000/-, here 'B' cannot be considered to have accepted the proposal.

3. The acceptance must be communicated: A contract between the parties, the acceptance must be communicated to the offeree, i.e. to the person who made the offer.

Example: A proposed B to marry him. B informed A's sister that she is ready to marry him. But his sister didn't inform A about the acceptance of proposal. There is no contract as acceptance was not communicated to A.

4. Acceptance must be in the prescribed mode: Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner. But if the proposer does not insist on the proposal being accepted in the manner prescribed after it has been accepted otherwise, i.e., not in the prescribed manner, acceptance shall be in reasonable mode.

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

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. What is reasonable time is nowhere defined in the law and thus would depend on facts and circumstances of the particular case.

Example: Mr. A offered to Mr. B his car for Rs. 2 Lakhs to be accepted in 3 days. Now B can accept the offer only in 3 days, if he accepts after 5 days, such acceptance is not valid.

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

Case Law: Felthouse vs. Bindley (1862)

Facts: F (Uncle) offered to buy his nephew's horse for £30 saying "If I hear no more about it I shall consider the horse mine at £30." The nephew did not reply to F. He told his auctioneer, B to keep the particular horse out of sale of his farm stock as he intended to reserve it for his uncle. By mistake the auctioneer sold the horse. F sued him for conversion of his property. **Held**, F could not succeed as his nephew had not communicated the acceptance to him.

7. Acceptance by conduct/Implied Acceptance: the performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, constitutes an acceptance of the proposal. Therefore, 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.

Example, when a tradesman receives an order from a customer and executes the order by sending the goods, the customer's order for goods constitutes the offer, which has been accepted by the trades man subsequently by sending the goods. It is a case of acceptance by conduct.

Example: When a cobbler sits with a brush and polish, a person giving his shoes for polishing constitutes as acceptance by conduct.

8. A counter offer or conditional acceptance operates as a rejection of the offer and causes it to lapse:

Example: where a horse is offered for Rs. 1,000 and the offeree counter-offers Rs. 990, the offer lapses by rejection.

9. Communication of Offer And Acceptance

When the contracting parties are face-to-face, there is no problem of communication because there is instantaneous communication of offer and acceptance. In such a case the question of revocation does not arise since the offer and its acceptance are made instantly.

The difficulty arises when the contracting parties are at a distance from one another and they utilise the services of the post office or telephone or email (internet). In such cases, it is very much relevant for us to know the exact time when the offer or acceptance is made or complete.

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"

Example: Where 'A' makes a proposal to 'B' by post to sell his house for Rs. 5 lakhs and if the letter containing the offer is posted on 10th March and if that letter reaches 'B' on 12th March the offer is said to have been communicated on 12th March when B received the letter.

Thus, it can be summed up that when a proposal is made by post, its communication will be complete when the letter containing the proposal reaches the person to whom it is made.

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

He receives the letter on 12th March, but he reads it on 15th of March. In this case offer is communicated on 15th of March, and not 12th of March.

Communication of acceptance: There are two issues for discussion and understanding. They are: The modes of acceptance and when is acceptance complete?

Let us, first consider the modes of acceptance. Section 3 of the Act prescribes in general terms two modes of communication namely, (a) by any act and (b) by omission, intending thereby, to communicate to the other or which has the effect of communicating it to the other.

Communication by act: This would include any expression of words whether written or oral. Written words will include letters, telegrams, faxes, emails and even advertisements. Oral words will include telephone messages. Again communication would include any conduct intended to communicate like positive acts or signs so that the other person understands what the person 'acting 'or 'making signs' means to say or convey.

Communication of acceptance by 'omission' to do something: Such omission is conveyed by a conduct or by forbearance on the part of one person to convey his willingness or assent. However, silence would not be treated as communication by 'omission'.

Example: A offers Rs. 50000 to B if he does not arrive before the court of law as an evidence to the case. B does not arrive on the date of hearing to the court. Here omission of doing an act amounts to acceptance.

Communication of acceptance by conduct: For instance, delivery of goods at a price by a seller to a willing buyer will be understood as a communication by conduct to convey acceptance. Similarly, one need not explain why one boards a public bus or drop a coin in a weighing machine. The first act is a conduct of acceptance against its communication to the offer by the public transport authority to carry any passenger. The second act is again a conduct conveying acceptance to use the weighing machine kept by the vending company as an offer to render that service for a consideration.

The other issue in communication of acceptance is about the effect of act or omission or conduct. These indirect efforts must result in effectively communicating its acceptance or non acceptance. If it has no such effect, there is no communication regardless of which the acceptor thinks about the offer within himself. Thus, a mere mental unilateral assent in one's own mind would not amount to communication.

Let us now come to the issue of when communication of acceptance is complete. In terms of Section 4 of the Act, it is complete,

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

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

For instance in the above example, if 'B' accepts, A's proposal and sends his acceptance by post on 14th, the communication of acceptance as against 'A' is complete on 14th, i.e. when the letter is posted. As against 'B' acceptance will be complete, when the letter reaches 'A'.

Here 'A' the proposer will be bound by B's acceptance, even if the letter of acceptance is delayed in post or lost in transit. The golden rule is proposer becomes bound by the contract, the moment acceptor has posted the letter of acceptance. But it is necessary that the letter is correctly addressed, adequately stamped and duly posted. In such an event the loss of letter in transit, wrong delivery, non delivery etc., will not affect the validity of the contract.

However, from the view point of acceptor, he will be bound by his acceptance only when the letter of acceptance has reached the proposer. So it is crucial in this case that the letter reaches the proposer. If there is no delivery of the letter, the acceptance could be treated as having been completed from the viewpoint of proposer but not from the viewpoint of acceptor. Of course this will give rise to an awkward situation of only one party to the contract, being treated as bound by the contract though no one would be sure as to where the letter of acceptance had gone.

Acceptance over telephone or telex or fax: When an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, 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. However, in case of a call drops and disturbances in the line, there may not be a valid contract.

Communication of special conditions: Sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

Example: Where a passenger undertakes a travel, the conditions of travel are printed at the back of the tickets, sometimes these special conditions are brought to the notice of the passenger, sometimes not. In any event, the passenger is treated as having accepted the special condition the moment he bought his ticket.

When someone travels from one place to another by air, it could be seen that special conditions are printed at the back of the air ticket in small letters [in a non-computerized train ticket even these are not printed] Sometimes these conditions are found to have been displayed at the notice board of the Airlines office, which passengers may not have cared to read. The question here is whether these conditions can be considered to have been communicated to the passengers of the Airlines and can the passengers be treated as having accepted the conditions. The answer to the question is in the affirmative and was so held in Mukul Datta vs. Indian Airlines [1962] AIR cal. 314 where the plaintiff had travelled from Delhi to Kolkata by air and the ticket bore conditions in fine print. But such terms and condition should be reasonable.

Example: Where a launderer gives his customer a receipt for clothes received for washing. 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.

CASE LAW: Lilly White vs. Mannuswamy (1970)

Facts: P 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, P lost her new saree. Held, the terms were unreasonable and P was entitled to recover full value of the saree from the drycleaner.

In the cases referred above, the respective documents have been accepted without a protest and hence amounted to tacit acceptance.

10. Revocation of Offer & Acceptance

If there are specific requirements governing the making of an offer and the acceptance of that offer, we also have specific law governing their revocation.

In term of Section 4, communication of revocation (of the proposal or its acceptance) is complete.

i) **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
ii) **as against the person to whom it is made**, when it comes to his knowledge.

The above law can be illustrated as follows: If you revoke your proposal made to me by a telegram, the revocation will be complete, as far as you are concerned when you have dispatched the telegram. But as far as I am concerned, it will be complete only when I receive the telegram.

As regards revocation of acceptance, if you go by the above example, I can revoke my acceptance (of your offer) by a telegram. This revocation of acceptance by me will be complete when I dispatch the telegram and against you, it will be complete when it reaches you.

But the important question for consideration is when a proposal can be revoked? And when can an acceptance be revoked? These questions are more important than the question when the revocation (of proposal and acceptance) is complete.

Ordinarily, 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.

Example: The bidder at an auction sale may withdraw (revoke) his bid (offer) before it is accepted by the auctioneer by fall of hammer.

An offer may be revoked by the offeror before its acceptance, even though he had originally agreed to hold it open for a definite period of time. So long as it is a mere offer, it can be withdrawn whenever the offeror desires.

Example: X offered to sell 50 bales of cotton at a certain price and promised to keep it open for acceptance by Y till 6 pm of that day. Before that time X sold them to Z and informed Y about Revocation of his offer. Y accepted before 6 pm, but after the revocation by X. In this case it was held that the offer was already revoked.

In terms of Section 5 of the Act a proposal can be revoked at any time before the communication of its acceptance is complete as against the proposer. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor.

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

Whereas B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

An acceptance to an offer must be made before that offer lapses or is revoked.

The law relating to the revocation of offer is the same in India as in England, but the law relating to the revocation of acceptance is different.

In English law, the moment a person expresses his acceptance of an offer, that moment the contract is concluded, and 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: As acceptance, in English law, cannot be revoked, so that once the letter of acceptance is properly posted the contract is concluded. In Indian law, 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: A contract can be made over telephone. The rules regarding offer and acceptance as well as their communication by telephone or telex are the same as for the contract made by the mutual meeting of the parties. 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, otherwise there will be no contract, as communication of acceptance is not complete. If telephone unexpectedly goes dead during conversation, the acceptor must confirm again that the words of acceptance were duly heard by the offeror.

Revocation of proposal otherwise than by communication: When a proposal is made, the proposer may not wait indefinitely for its acceptance. The offer can be revoked otherwise than by communication or sometimes by lapse.

11. Modes of Revocation of Offer

1. By notice of revocation:

- An offer ripens into a contract after it is accepted. Before it has been accepted it creates no legal obligation and, therefore, it may be revoked at any time before it is accepted. To be effective the notice of revocation has to be communicated by the proposer and not by anybody else.

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. This is for the reason that proposer should not be made to wait indefinitely.

3. By non fulfillment of condition precedent:

- Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. The offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal.

4. By death or insanity:

- eath or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.

5. By counter offer:

- When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer.

6. By the non acceptance of the offer according to the prescribed or usual mode:

- When offeree fails to accept the offer in prescribed manner, but accepts in any other manner the offer is said to be revoked.

7. By subsequent illegality:

- If the contract which is intended to be made by the offeree becomes illegal due to happening of any uncertain event after communication of offer but before acceptance, such offer is treated as revoked and can not be accepted.

Important Notes:

Unit 2 : Consideration

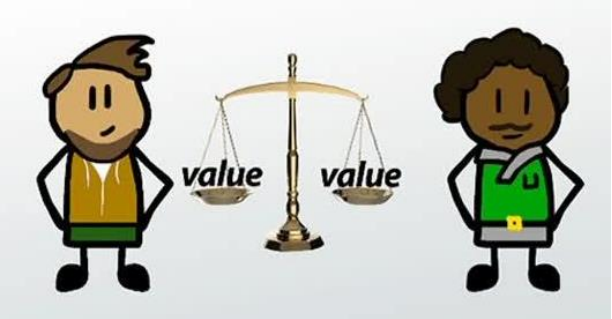
Unit Overview

- **Meaning of Consideration**
- **Essentials of Valid Consideration**
- **Validity of Agreements without Consideration**
- **Suit by Third Party to a Contract (Privity of Contract)**

1. What is Consideration?

Definition:

As per Section 2(d) consideration: "When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise".



Analysis of Definition of Consideration

1. Consideration is an act- doing something.

Example: A college promises students, who will score above 95% for the job in MNC. Consideration need not to be monetary. Here the promise for recruitment of candidate will be considered as consideration for the act of students scoring above 95%.

2. Consideration is abstinence- abstain from doing something.

Example: ABC has a shop of electric items. XYZ wishes to open another electric shop next to his shop. ABC offers Rs. 2,00,000 to XYZ for shifting the same away from 1 km of ABC's shop. Here, consideration is given for abstaining XYZ from opening his shop nearby.

3. Consideration must be at the desire of the promisor.

4. Consideration may move from promisee or any other person.

5. Consideration may be past, present or future.

Thus, from above it can be concluded that:

Consideration = Promise / Performance that parties exchange with each other.

Form of consideration = Some benefit, right or profit to one party / some detriment, loss, or forbearance to the other.

2. Essentials of Valid Consideration

1. Consideration must move at the desire of the promisor: Consideration must be offered by the promisee or the third party at the desire or request of the promisor. This implies "return" element of consideration. Contract of marriage in consideration of promise of settlement is enforceable. An act done at the desire of a third party is not a consideration.

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

2. Consideration may move from promisee or any other person: In India, consideration may proceed from the promisee or any other person, even from person who is not a party to the contract. There can be a stranger to a consideration but not stranger to a contract.

Example: An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter. [Chinnayya vs. Ramayya]

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. The promise by one party may be the consideration for an act by some other party, and vice versa.

Example: A pays Rs. 5,000 to B and B promises to deliver to him a certain quantity of wheat within a month. In this case A pays the amount, whereas B merely makes a promise. Therefore, the consideration paid by A is executed, whereas the consideration promised by B is executory.

4. Consideration may be past, present or future: In order to support a promise, a past consideration must move by a previous request. It is a general principle that consideration is given and accepted in exchange for the promise. The consideration, if past, may be the motive but cannot be the real consideration of a subsequent promise. But 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.

Example: Past consideration -Prepaid SIM card
Present consideration -Calling from PCO
Future consideration -Postpaid SIM card

5. 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 would regard as having some value. Something in return need not be equal to something given. It can be considered a bad bargain of the party. It may be noted in this context that Explanation 2 to Section 25 states that an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate. But as an 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 evidence in support of this allegation.

Example: X promises to sell a house worth Rs. 6 lacs for Rs. 5 lacs only, the adequacy of the price in itself shall not render the transaction void, unless the party pleads that transaction takes place under coercion, undue influence or fraud.

6. Performance of what one is legally not bound to perform: (consideration must not be performance of 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, as it is moral duty of witness to give statement in court.

Example: A college teacher who is already bound by his duty to teach cannot demand money from students for his lectures. But if he is giving private tuition after college is completed, He can ask for fees.

7. Consideration must be real and not illusory: Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.

Examples: A man promises to discover treasure by magic. This transaction can be said to be void as it is illusory.

8. Consideration must not be unlawful, immoral, or opposed to public policy: Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

Example: ABC Ltd. promises to give job to Mr. X in a Government bank against payment of Rs. 50,000 is void as the promise is opposed to public policy.

3. Validity of an Agreement Without Consideration (Section 25)

The general rule is that an agreement made without consideration is void. In every valid contract, consideration is very important. However, the Indian Contract Act contains certain exceptions to this rule where contract is valid even though without consideration.

1. Natural Love and Affection: An agreement though made without consideration will be valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other.

Example: A out of love and affection promise to give his son B Rs. 51000. He got this promise registered. This is valid contract despite no consideration from B.

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.

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

Example: A out of natural love and affection promises to give his newly wedded daughter- in -law a golden necklace worth Rs. 5,00,000. 'A' made the promise in writing and signed it and registered. The agreement is valid.

2. Compensation for past voluntary services: A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable.

Conditions to be fulfilled:

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

Example: Mr. X had helped his nephew Mr. Y to fight a case in the court of law using his knowledge and intellect. After Mr. Y won the case, he promised Mr. X to pay Rs. 10,000. Held, this is a valid contract as it is compensation to past services.

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

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

4. Agency: According to Section 185 of the Indian Contract Act, 1872, no consideration is necessary to create an agency.

5. Completed gift: In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 states "nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.

6. Bailment: No consideration is required to affect the contract of bailment. Section 148 of the Indian Contract Act, 1872, defines bailment as the delivery of goods from one person to another for some purpose. This delivery is made upon a contract that post accomplishment of the purpose, the goods will either be returned or disposed of, according to the directions of the person delivering them. No consideration is required to affect a contract of bailment

Example: Mr. A hand over the keys of his godown to Mr. Y as Mr. Y had deposited his goods in the same. Mr. Y gets possession of godown but not the ownership. As soon as Mr. Y lifts his goods from godown he is liable to hand over the keys back to Mr. A.

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

4. Suit by Third Party to a Contract (Privity of Contract)

Though under the Indian Contract Act, 1872, the consideration for an agreement may proceed from a third party, the third party cannot sue on contract. Only a person who is party to a contract can sue on it. Thus, the concept of stranger to consideration is a valid and is different from stranger to a contract.

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

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

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

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

Example: Two brothers X and Y agreed to pay an allowance of Rs. 20,000 to mother on partition of joint properties. But later they denied to abide by it. Held their mother although stranger to contract can require their sons for such allowance in the court of law.

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.

Example: Mr. X's wife deserted him for ill-treating her. Mr. X promised his wife's father Mr. Puri that he will treat her properly or else pay her monthly allowance. But she was again ill-treated by her husband. Held, she has all right to sue Mr. X against the contract made between Mr. X and Mr. Puri even though she was stranger to contract.

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 skill.

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.

Example: If L gives to M Rs. 20,000 to be given to N, and M informs N that he is holding the money for him, but afterwards M refuses to pay the money. N will be entitled to recover the same from the former i.e. M.

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

Example: One owner of the land having two land adjacent to each other. One was agricultural land. He sold the other land containing a condition that it can never be used for Industrial purpose so as to protect the other agricultural land from pollution. Such condition is attached with the land so who so ever is the successor of land has to abide by it. Such are called restrictive covenants and all successor are bind to it.

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.

Important Notes:

Unit 3 : Other Essential Elements of Valid Contract

Unit Overview

- **Capacity to Contract**
  - **Validity of Agreement with Minor**
- **Free Consent**
- **Lawful Consideration & Object**
- **Should not be Expressly Declared as void**
- **Agreements Opposed to Public Policy**

1. Capacity to Contract

Meaning:

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

Who is competent to contract? (Section 11)

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

Analysis of Section 11:

This section deals with personal capacity of three types of individuals only. Every person is competent to contract who-

(A) has attained the age of majority,
(B) is of sound mind and
(C) is not disqualified from contracting by any law to which he is subject.

1. Age of Majority: In India, the age of majority is regulated by the Indian Majority Act, 1875. Every person domiciled in India shall attain the age of majority on the completion of 18 years of age and not before. The age of majority being 18 years, a person less than that age even by a day would be minor for the purpose of contracting.

2. Unsound mind: For the purposes of making contract, a person is of unsound mind if at the time when he makes the contract, he is incapable of understanding it and of forming rational judgment as to its effect upon his interests. A person of unsound mind cannot enter into a contract. A lunatic's agreement is therefore void. But if he makes a contract when he is of sound mind, i.e., during lucid intervals, he will be bound by it.

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

3. Specifically Disqualified by Law: Besides minors and persons of unsound mind, there are also other persons who are disqualified from contracting, partially or wholly, so that the contracts by such person are void. Incompetency to contract may arise from political status, corporate status, legal status, etc.

The following persons fall in this category:

i) Foreign Sovereigns and Ambassadors
ii) Alien enemy
iii) Corporations
iv) Convicts
v) Insolvent etc.

2. Law relating to Minor's agreement/Position of Minor

1. 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 very beginning.

It is especially provided in Section 10 that a person who is incompetent to contract cannot make a contract within the meaning of the Act.

In the leading case of **Mohori Bibi vs. Dharmo Das Ghose (1903),**

"A, a minor borrowed Rs. 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. It was held that a mortgage by a minor was void and B was not entitled to repayment of money. Further money lender's request for repayment of amount advanced to the minor as part of consideration for the mortgage was also not accepted.

2. 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.

Example: X, a minor makes a promissory note in the name of Y. On attaining majority, he cannot ratify it and if he makes a new promissory note in place of old one, here the new promissory note which he executed after attaining majority is also void being without consideration.

3. Minor can be a beneficiary or can take benefit out of a contract: Though a minor is not competent to contract, nothing in the Contract Act prevents the minor from making the other party bound to him. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, accept the benefit.

Example: A mortgage was executed in favour of a minor. Held, he can get a decree for the enforcement of the mortgage.

4. A minor can always plead minority: A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor. It means he can be allowed to plea his minority in defence.

Example: A, a minor has falsely induced himself as major and contracted with Mr. X for loan of Rs. 40,000. When Mr. X asked for the repayment, A denied to pay. He pleaded that he was a minor so cannot enter into any contract. Held, A cannot be held liable for repayment of amount. However, if he has not spent the same, he may be asked to repay it but the minor shall not be liable for any amount which he has already spent even though he received the same by fraud.

5. Liability for necessaries: The case of necessaries supplied to a minor or to any other person whom such minor is legally bound to support is governed by section 68 of the Indian Contract Act. A claim for necessaries 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 necessaries. There is no personal liability of the minor, but only his property is liable.

To render minor's estate liable for necessaries two conditions must be satisfied.

i) The contract must be for the goods reasonably necessary for support in life.
ii) The minor must not have already a sufficient supply of these necessaries.

Note: Necessaries mean those things that are essentially needed by a minor. They cannot include luxuries or costly or unnecessary articles. Necessaries extend to all such things as reasonable persons would supply to an infant in that class of society to which the infant belongs. Expenses on minor's education, on funeral ceremonies come within the scope of the word 'necessaries'. The whole question turns upon the minor's status in life. Utility rather than ornament is the criterion.

Example: Shruti being a minor purchased a laptop for her online classes of Rs. 70,000 on credit from a shop. But her assets could pay only Rs. 20,000. The shop keeper could not hold Shruti personally liable & could recover only amt. recoverable through her assets i.e. upto Rs. 20,000.

6. Contract by guardian – how far enforceable: Though a minor's agreement is void, but his guardian can, under certain circumstances enter into a valid contract on minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce.

But all contracts made by guardian on behalf of a minor are not valid. For instance, the guardian of a minor has no power to bind the minor by a contact for the purchase of immovable Property. But a contract entered into by a certified guardian (appointed by the Court) of a minor, with the sanction of the court for the sale of the minor's property, may be enforced by either party to the contract.

7. No specific performance: A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.

Example: A minor entered into an Agreement with Mr. Y to perform a Singing concert which he fails to perform. Mr. Y can not sue the minor for specific performance.

8. No insolvency: A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he shall never be held personally liable.

9. Partnership: A minor being incompetent to contract cannot be a partner in a partnership firm, but under Section 30 of the Indian Partnership Act, he can be admitted to the benefits of partnership.

Example: Mr. X & Y started a partnership firm, after 2 years A minor is being admitted to the partnership by his guardin for his benefits.

10. Minor can be an agent: A minor can act as 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.

Example: A minor can have an account in the bank. He can draw a cheque for his purchases. But he shall not be liable for cheque bounces nor can he be sued under court of law for any fraud done from his account.

11. Minor cannot bind parent or guardian: In the absence of authority, express or implied, an infant is not capable of binding his parent or guardian, even for necessaries. The parents will be held liable only when the child is acting as an agent for parents.

Example: Katrina a minor entered into contract of buying a scooty from the dealer and mentioned that her parents will be liable for the payment of scooty. The dealer sent a letter to her parents for money. The parents will not be liable for such payment as the contract was entered by a minor in their absence and out of their knowledge.

12. Joint contract by minor and adult: In such a case, the adult will be liable on the contract and not the minor. In Sain Das vs. Ram Chand, where there was a joint purchase by two purchasers, one of them was a minor, it was held that the vendor could enforce the contract against the major purchaser and not the minor.

13. 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.

Example: Mr. X guaranteed for the purchase of a mobile phone by Karan, a minor. In case of failure for payment by Karan, Mr. X will be liable to make the payment.

14. Minor as Shareholder: A minor, being incompetent to contract cannot be a shareholder of the company. If by mistake he becomes a member, the company can rescind the transaction and remove his name from register. But, a minor may, acting

though his lawful guardian become a shareholder by transfer or transmission of fully paid shares to him.

15. Liability for torts: A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract.

Example: where a minor borrowed a horse for riding only he was held liable when he lent the horse to one of his friends who jumped and killed the horse. Similarly, a minor was held liable for his failure to return certain instruments which he had hired and then passed on to a friend.

3. Free Consent

Definition of Consent according to Section 13:

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

Parties are said to have consented when they not only agreed upon the same thing but also agreed upon that thing in the same sense. 'Same thing' must be understood as the whole content of the agreement. Consequently, when parties to a contract make some fundamental error as to the nature of the transaction, or as to the person dealt with or as to the subject-matter of the agreement, it cannot be said that they have agreed upon the same thing in the same sense. And if they do not agree in the same sense, there cannot be consent.

A contract cannot arise in the absence of consent.

If two persons enter into an apparent contract concerning a particular person or ship, and it turns out that each of them, misled by similarity of name, had a different person or ship in his mind, no contract would exist between them as they were not ***ad idem***, i.e. of the same mind. Again, ambiguity in the terms of an agreement, or an error as to the nature of any transaction or as to the subject-matter of any agreement may prevent the formation of any contract on the ground of absence of consent. In the case of fundamental error, there is really no consent whereas, in the case of mistake, there is no real consent.

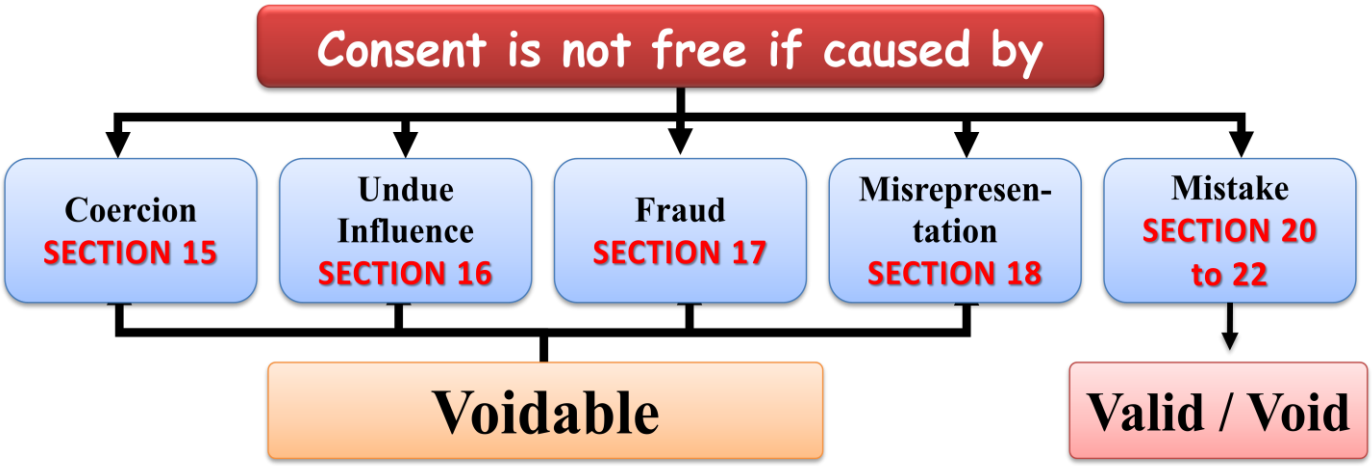
One of the essential elements of a contract is consent and there cannot be a contract without consent. Consent may be free or not free. Only free consent is necessary for the validity of a contract.

Definition of 'Free Consent' (Section 14)

Consent is said to be free when it is not caused by:

1. Coercion, as defined in Section 15; or
2. Undue Influence, as defined in Section 16; or
3. Fraud, as defined in Section 17; or
4. Misrepresentation, as defined in Section 18 or
5. Mistake, subject to the provisions of Sections 20, 21, and 22.

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



I. Coercion (Section 15)

"Coercion' is the committing, or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement."

Analysis of Section 15

The section does not require that coercion must proceed from a party to the contract; nor is it necessary that subject of the coercion must be the other contracting party, it may be directed against any third person whatever.

Following are the essential ingredients of coercion:

i) Committing or threatening to commit any act forbidden by the India Penal Code; or
ii) the unlawful detaining or threatening to detain any property to the prejudice of any person whatever,

iii) With the intention of causing any person to enter into an agreement.

iv) It is to be noted that is immaterial whether the India Penal Code is or is not in force at the place where the coercion is employed.

Example: Where husband obtained a release deed from his wife and son under a threat of committing suicide, the transaction was set aside on the ground of coercion, suicide being forbidden by the Indian Penal Code. The threat of suicide also amounts to coercion.

II. Undue influence (Section 16)

According to section 16 of the Indian Contract Act, 1872, "A contract is said to be induced by 'undue influence' where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other".

A person is deemed to be in position to dominate the will of another:

i) Where he holds a real or apparent authority over the other; or

ii) Where he stands in a fiduciary relationship to the other; or

iii) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

The essential ingredients under this provision are:

1. Relation between the parties: A person can be influenced by the other when a near relation between the two exists.

2. Position to dominate the will: Relation between the parties exist in such a manner that one of them is in a position to dominate the will of the other. A person is deemed to be in such position in the following circumstances:

i) **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.

Example: A father, by reason of his authority can dominate the will of his son.

ii) **Fiduciary relationship:** Where relation of trust and confidence exists 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.

Example: By reason of fiduciary relationship, a solicitor can dominate the will of his client and a trustee can dominate the will of the beneficiary.

Example: A spiritual guru induced his devotee to gift to him the whole of his property in return of a promise of salvation of the devotee.

iii) **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 of old age.

Example: A doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness.

iv) **Unconscionable bargains:** Where one of the parties to a contract is in a position to dominate the will of the other and the contract is apparently unconscionable i.e., unfair, it is presumed by law that consent must have been obtained by undue influence. Unconscionable bargains are witnessed mostly in money-lending transactions and in gifts.

Example: A applies to a banker for a loan at a time when there is a stringency in money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

3. The object must be to take undue advantage: Where the person is in a position to influence the will of the other in getting consent must have the object to take advantage of the other.

Example: A teacher asks her daughter to get marry to one of his brilliant students. Both the girl and boy were smart, settled and intelligent. Here the teacher had a relation which can have influence on both of them. But as no undue advantage of such influence was taken such contract of marriage is said to be made by free consent.

4. Burden of proof: The burden of proving the absence of the dominant position to obtain the unfair advantage will lie on the party who is in a position to dominate the will of the other.

Fraud (Section 17)

Definition of Fraud under Section 17:

'Fraud' means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with an intent to deceive another party thereto or his agent, or to induce him to enter into the contract:

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

The following are the essential elements of the fraud:

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

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

i) He can rescind the contract within a reasonable time.
ii) He can sue for damages.
iii) 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.

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

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

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

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

Mere silence is not fraud

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

Example: H sold to W some pigs which were to his knowledge suffering from fever. The pigs were sold 'with all faults' and H did not disclose the fact of fever to W. There was no fraud.

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

Silence is fraud when:

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

Following contracts come within this category:

i) **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.
ii) **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.
iii) **Contracts of marriage**: Every material fact must be disclosed by the parties to a contract of marriage.
iv) **Contracts of family settlement:** These contracts also require full disclosure of material facts within the knowledge of the parties.
v) **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 amounts to speech.

Note: In case of fraudulent silence, contracts are not voidable if the party whose consent was so obtained had the means of discovering the truth with ordinary diligence. **(Exception to section 19)**

IV. Misrepresentation (Section 18)

Misrepresentation means and includes –

i) the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
ii) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;

iii) causing, however, innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Analysis of Section 18

According to Section 18, there is misrepresentation:

i) 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;
ii) When there is a breach of duty by a person without any intention to deceive which brings an advantage to him;
iii) When a party causes, even though done innocently, the other party to the agreement to make a mistake as to the subject matter.

Example: A makes a positive statement to B that C will be made the director of a company. A makes the statement on information derived, not directly from C but from M. B applies for shares on the faith of the statement which turns out to be false. The statement amounts to misrepresentation.

Example: 'A' believed the engine of his motor cycle to be in an excellent condition. 'A' without getting it checked in a workshop, told to 'B' that the motor cycle was in excellent condition. On this statement, 'B' bought the motor cycle, whose engine proved to be defective. Here, 'A's statement is misrepresentation as the statement turns out to be false.

Example: A buy an article thinking that it is worth Rs. 1000 when in fact it is worth only Rs. 500. There has been no misrepresentation on the part of the seller. The contract is valid since the buyer has means to check the goods and its price before buying the same.

4. Legal effects of agreements without free consent – (Section 19)

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

A party to 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.

Example: A, intending to deceive B, falsely represents that 500 tons of indigo are made annually at A's factory, and thereby induces B to buy the factory. The contract is voidable at the option of B.

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

Example: A by a misrepresentation leads B to believe erroneously that 750 tons of sugar is produced per annum at the factory of A. B examines the accounts of the factory, which should have disclosed, if ordinary diligence had been exercised by B, that only 500 tons had been produced. Thereafter B purchases the factory. In the circumstance, B cannot repudiate the contract on the ground of A's misrepresentation.

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

Example: A, intending to deceive B, falsely represents that the mobile phone have 50 megapixel camera, But B is not concerned with the camera, he purchased the mobile based on 8 GB RAM availability. Later when he found the camera to be only 48 megapixels, Held he cannot avoid the contract.

5. Difference between Coercion and Undue influence:

Basis of difference	Coercion	Undue Influence
Nature of action	It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	It involves moral or mental pressure.
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.	No such illegal act is committed or a threat is given.
Relationship between parties	It is not necessary that there must be some sort of relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
Exercised by whom	Coercion need not proceed from the promisor nor need it be the directed against the promisor. It can be used even by a stranger to the contract.	Undue influence is always exercised between parties to the contract.

Enforceability	The contract is voidable 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 either voidable or the court may set it aside or enforce 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, any benefit received has to be restored back to the other party.	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.

6. Distinction between fraud and misrepresentation:

Basis of difference	Fraud	Misrepresentation
Intention	To deceive the other party by hiding the truth.	There is no such intention to deceive the other party.
Knowledge of truth	The person making the suggestion believes that the statement as untrue.	The person making the statement believes it to be true, although it is not true.
Rescission of the contract and claim for damages	The injured party can repudiate the contract and claim damages.	The injured party is entitled to repudiate the contract or sue for restitution but cannot claim the damages.
Means to discover the truth	The party using the fraudulent act cannot secure or protect himself by saying that the injured party had means to discover the truth.	Party can always plead that the injured party had the means to discover the truth.

7. 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.

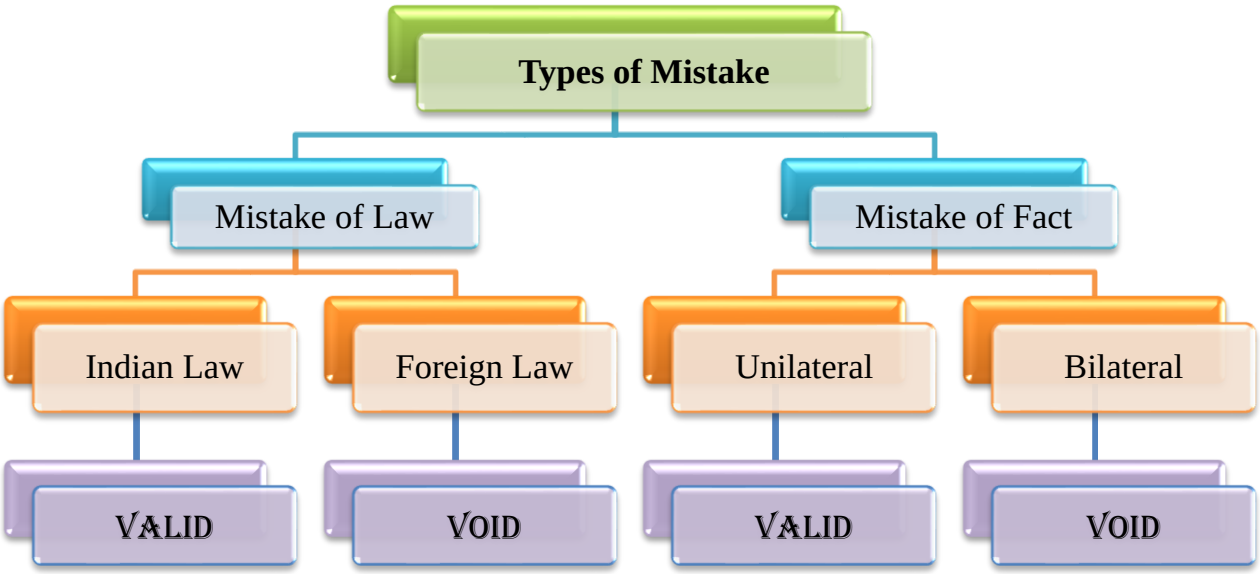
- Bilateral mistake is when both the parties to a contract are under a mistake.
- Unilateral mistake is when only one party to the contract is under a mistake.

Effect of mistake on validity of a contract: Mistake is some unintentional act, omission or error, arising from unconsciousness, ignorance or forgetfulness, imposition or misplaced confidence. It may be of two kinds-

i) **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.

ii) **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.

Example: A offers to sell his Ambassador Car to B, who believes that A has only Fiat Car, agrees to buy the car. Here, the two parties are thinking about different subject matter so that there is no real consent and the agreement is void.



8. LEGALITY OF OBJECT AND CONSIDERATION

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

1. It is forbidden by law; or
2. Is of such a nature that, if permitted, it would defeat the provisions of any law; or
3. Is fraudulent; or
4. Involves injury to the person or property of another; or
5. The court regards it as immoral; or
6. Opposed to public policy.

In each of these cases, the consideration or object of an agreement is said to be unlawful.

Every agreement of which the object or consideration is unlawful is void.

Example: A, B and C enter into an agreement for the division among them of gains acquired, or to be acquired, by them by fraud. The agreement is void, as its object, viz., acquisition of gains by fraud is unlawful.

Example: A promises to B to abandon a prosecution which he had instituted against B for robbery and B promises in lieu thereof to restore the value of the property robbed. The agreement is void as its object, namely, the stifling of prosecution, is unlawful.

Under Section 23 of the Indian Contract Act, in each of the following cases the consideration or object of an agreement is said to be unlawful:

1. 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.

Example: Forest Department has banned cutting Trees in particvular area without permission. Mr. X contracts and appoints Mr. Y to cut 100 Trees from that restricted area.

2. When consideration or object defeats the provision of law: The words 'defeat the provisions 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 provisions of law, the court will not enforce it.

Example: An agreement of loan in which clause setting aside the limitation period is held to be invalid.

3. When it is fraudulent: Agreements which are entered into to promote fraud are void.

Example: an agreement for the sale of goods for the purpose of smuggling them out of the country is void and the price of the goods so sold, cannot be recovered.

4. When it involves injury to the person or property of another: The general term "injury" means criminal or wrongful harm. In the following examples, the object or consideration is unlawful as it involves injury to the person or property of another.

Example: An agreement to print a book in violation of another's copyright is void, as the object is to cause injury to the property of another. It is also void as the object of the agreement is forbidden by the law relating to copyright.

5. When it is immoral: Any agreement against the standards of morality of the society is void.

Example: A landlord cannot recover the rent of a house knowingly let to prostitute who carries on her vocation there. Here, the object being immoral, the agreement to pay rent is void.

6. When it is opposed to public policy: The expression 'public policy' can be interpreted either in a wide or in a narrow sense. The freedom to contract may become illusory, unless the scope of 'public policy' is restricted. In the name of public policy, freedom of contract is restricted by law only for the good for the community. In law, public policy covers certain specified topics, e.g., trading with an enemy, stifling of prosecutions, champerty, maintenance, interference with the course of justice, marriage brokerage, sales of public offices, etc.

9. Agreements opposed to public policy:

Some of the agreements which are held to be opposed to public policy are-

1. Trading with enemy: Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed to public policy. Here, the agreement to trade offends against the public policy by tending to prejudice the interest of the State in times of war.

2. Stifling Prosecution: An agreement to stifle prosecution i.e. "an 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. The principle is that one should not make a trade of felony. The compromise of any public offence is generally illegal.

3. 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.

4. 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 money consideration for the appointment to an office in which the public is interested.

Example: An agreement to pay money to a public servant in order to induce him to retire from his office so that another person may secure the appointment is void.

5. Agreements tending to create monopolies: Any Agreements having their object of the establishment of monopolies are opposed to public policy and therefore void.

6. Marriage brokerage agreements: An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. For instance, an agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void. Note: Marriage bureau only provides information and doesn't negotiate marriage for reward, therefore, it is not covered under this point.

7. Interference with the course of justice: An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy; so also is an agreement by A to reward B, who is an intended witness in a suit against A in consideration of B's absenting himself from the trial. For the same reasons, an agreement which contemplates the use of under-hand means to influence legislation is void. Similarly, as agreement to induce any executive officer of the State to act partially or corruptly is void.

8. Agreement creating Interest against duty: If a person enters into an agreement to do or not to do something opposed to his duty is void. The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy.

Example: An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.

Example: A, who is the manager of a firm, agrees to pass a contract to X if X pays to A Rs. 200,000 privately; the agreement is void.

9. 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. The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.

10. Void Agreements:

In total there are 11 Void Agreements out of which we have already discussed about 5 Agreements -

1. Made by incompetent parties	(Section 11)
2. Agreements made under Bilateral mistake of fact	(Section 20)
3. Agreements the consideration or object of which is unlawful	(Section 23)
4. Agreement the consideration or object of which is unlawful in parts	(Section 24)
5. Agreements made without consideration	(Section 25)
6. Agreement in restraint of marriage	**(Section 26)**
7. Agreements in restraint of trade	**(Section 27)**
8. Agreement in restraint of legal proceedings	**(Section 28)**
9. Agreement the meaning of which is uncertain	**(Section 29)**
10. Wagering Agreement	**(Section 30)**
11. Agreements to do impossible Acts	**(Section 56)**

1. Agreement in restraint of marriage (Section 26): Every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding and considered as void agreement.

2. Agreement in restraint of trade (Section 27): An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

But this rule is subject to the certain 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 (goodwill is the advantage enjoyed by a business on account of public patronage and encouragement from habitual customers). The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.

Example: B, a physician and surgeon, employs A as an assistant for a term of three years and A agrees not to practice as a surgeon and physician during these three years.

The agreement is valid and A can be restrained by an injunction if he starts independent practice during this period.

Example: An agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant is not in restraint of trade.

Example: Agreement among the sellers of a particular commodity not to sell the commodity for less than a fixed price is not an agreement in restraint of trade.

3. Agreement in restraint of legal proceedings (Section 28): 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 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.

4. Agreement – the meaning of which is uncertain: An agreement, the meaning of which is not certain, is void, but where the meaning thereof is capable of being made certain, the agreement is valid.

Example: A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty. But the agreement would be valid if A was dealer only in coconut oil; because in such a case its meaning would be capable of being made certain.

5. Wagering agreement (Section 30): The literal meaning of the word "wager" is a "bet". Wagering agreements are nothing but ordinary betting agreements. An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

Example: A and B enter into an agreement that if Englands Cricket Team wins the test match, A will pay B Rs. 100 and if it loses B will pay Rs. 100 to A. This is a wagering agreement and nothing can be recovered by winning party under the agreement.

In India except Mumbai, wagering agreements are void. In Mumbai, wagering agreements have been declared illegal by the Avoiding Wagers (Amendment) Act, 1865.

Therefore, in Mumbai a wagering agreement being illegal, is void not only between the immediate parties, but taints and renders void all collateral agreements to it.

Essentials of a Wager

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

Transactions similar to Wager (Gambling)

1. Lottery transactions: A lottery is a game of chance and not of skill or knowledge. Where the prime motive of participant is gambling, the transaction amounts to a wager. Even if the lottery is sanctioned by the Government of India it is a wagering transaction. The only effect of such sanction is that the person responsible for running the lottery will not be punished under the Indian Penal Code. Lotteries are illegal and even collateral transactions to it are tainted with illegality (Section 294A of Indian Penal Code).

2. Crossword Puzzles and Competitions: Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.

Case Law: State of Bombay vs. R.M.D. Chamarbangwala AIR (1957)

Facts: A crossword puzzle was given in magazine. Abovementioned clause was stated in the magazine. A solved his crossword puzzle and his solution corresponded with previously prepared solution kept with the editor.

Held, this was a game of chance and therefore a lottery (wagering transaction).

Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competitions are valid. According to the Prize Competition Act, 1955 prize competitions in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.

3. Speculative transactions: 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.

4. Horse Race Transactions: A horse race competition where prize payable to the bet winner is less than Rs. 500, is a wager.

Example: A and B enter into an agreement in which A promises to pay Rs. 2,00,000 provided 'Chetak' wins the horse race competition. This is not a wagering transaction.

Transactions resembling with wagering transaction but are not void

1. Chit fund: Chit fund does not come within the scope of wager. 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.

2. 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.

3. Games of skill and Athletic Competition: Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid.

According to the Prize Competition Act, 1955 prize competition in games of skill are not wagers provided the prize money does not exceed Rs. 1,000.

4. A contract of insurance: A contract of insurance is a type of contingent contract and is valid under law and these contracts are different from wagering agreements.

11. Distinction between Contract of Insurance and Wagering Agreement

Basis of Difference	Contracts of Insurance	Wagering Agreement
Meaning	It is a contract to indemnify the loss to other person.	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 amount).	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 person against loss.	Loser has to pay the fixed amount on the happening of uncertain event.
Enforceability	It is valid and enforceable	It is void and unenforceable agreement.
Premium	Calculation of premium is based on scientific and actuarial calculation of risks.	No such logical calculations are required in case of wagering agreement.
Public Welfare	They are beneficial to the society.	They have been regarded as against the public welfare.

Important Notes:

Unit 4 : Performance of Contract

Unit Overview

- **Meaning & Types of Performance**
  - **Actual Performance**
  - **Tendered Performance**
- **Who Can Perform The Contract**
- **Rights & Liabilities of Joint Promisor & Promisee**
- **Time & Place of Performance**
- **Rules regarding Performance of Reciprocal Promises**
- **Appropriation of Payments**
- **Discharge of Contract**

1. What is a Performance? (Section 37)

As per 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.

Analysis of Section 37

A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharged. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge.

The basic rule is that the promisor must perform exactly what he has promised to perform. The obligation to perform is absolute. Thus, it may be noted that it is necessary for a party who wants to enforce the promise made to him, to perform his promise for himself or offer to perform his promise. Only after that he can ask the other party to carry out his promise. This is the principle which is enshrined in Section 37. Thus, 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 under a provision of law or an act of the other party to the contract, the performance can be dispensed with or excused.

Thus, from above it can be drawn that performance may be actual or offer to perform.

i) **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.

Example: X borrows Rs. 5,00,000 from Y with a promise to be paid after 1 month. X repays the amount on the due date. This is actual performance.

ii) **Offer to perform or attempted performance or tender of performance:** It may happen sometimes, when the performance becomes due, the promisor offers to perform his obligation but the promisee refuses to accept the performance.

Example: P promises to deliver certain goods to R. P takes the goods to the appointed place during business hours but R refuses to take the delivery of goods. This is an attempted performance as P the promisor has done what he was required to do under the contract.

2. Effect of Refusal to Accept Offer of Performance (Section 38)

According to Section 38 of the Act - 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 fulfill certain conditions which are as follows, namely:

i) it must be unconditional;
ii) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what he is bound by his promise to do;
iii) if the offer is an offer to deliver anything to the promisee, then the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver.

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

3. Effect of Refusal of Party to Perform Wholly (Section 39)

Section 39 provides that when a party to a contract has refused to perform or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract unless he had signified, by words or conduct his acquiescence in its continuance.

Example: X, a singer enters into a contract with Y, the manager of a theatre to sing at his theatres two nights in every week during the next two months, and Y engaged to

pay her Rs. 10,000 for each night's performance. On the sixth night, X willfully absents herself from the theatre. Y is at liberty to put an end to the contract.

Analysis of Section 39

The following two rights accrue to the aggrieved party, namely, (a) to terminate the contract; (b) 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.

4. By Whom A Contract May Be Performed (Section 40, 41 And 42)

As per Section 40 – If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself, such promise must be performed by the promisor. In other cases, the promisor or his representatives may employ a competent person to perform it.

Analysis of Section 40

The promise under a contract may be performed, as the circumstances may permit, by the promisor himself, or by his agent or his legal representative.

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. This means contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.

Example: A promises to paint a picture for B for a certain price. A is bound to perform the promise himself. He cannot ask some other painter to paint the picture on his behalf.

If A dies before painting the picture, the contract cannot be enforced either by A's representative or by B.

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: A contract which involves the use of personal skill or is founded on personal consideration comes to an end on the death of the promisor. As regards any other contract the legal representatives of the deceased promisor are bound to perform it unless a contrary intention appears from the contract. But their liability under a contract is limited to the value of the property they inherit from the deceased.

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

4. Third persons: Effect of accepting performance from third person- Section 41

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, if accepted by the promisee, this results in discharging the promisor, although the latter has neither authorised not ratified the act of the third party.

Example: A received certain goods from B promising to pay Rs. 100,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays Rs. 60,000/- to B on behalf of A. However, A was not aware of the payment. Now B is intending to sue A for the amount of Rs. 100,000/-. Therefore, in the present instance, B can sue only for the balance amount i.e., Rs. 40,000/- and not for the whole amount.

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.

Example: 'A', 'B' and 'C' jointly promised to pay Rs. 6,00,000 to 'D'. Here 'A', 'B' and 'C' must jointly perform the promise. If 'A' dies before performance, then his legal representatives must jointly with 'B' and 'C' perform the promise, and so on. And if all the three (i.e. 'A', 'B' and 'C') die before performance, then the legal representatives of all must jointly perform the promise.

5. Liability of Joint Promisor & Promisee

Devolution of joint liabilities (Section 42)

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

Example: X, Y and Z who had jointly borrowed money must, during their life-time jointly repay the debt. Upon the death of X his representative, say, S along with Y and Z should jointly repay the debt and so on. If in an accident all the borrowers X, Y and Z

dies then their legal representatives must fulfil the promise and repay the borrowed amount. This rule is applicable only if the contract reveals no contrary intention.

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.

Example: A, B and C jointly promise to pay D Rs. 3,00,000. D may compel either A or B or C to pay him Rs. 3,00,000.

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.

In other words, 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.

Example: X, Y and Z jointly promise to pay Rs. 6,000 to A. A may compel either X or Y or Z to pay the amount. If Z is compelled to pay the whole amount; X is insolvent but his assets are sufficient to pay one-half of his debts. Z is entitled to receive Rs. 1,000 from X's estate and Rs. 2,500 from Y.

We thus observe that the effect of Section 43 is to make the liability in the event of a joint contract, both joint & several, in so far as the promisee may, in the absence of a contract to the contrary, compel anyone or more of the joint promisors to perform the whole of the promise.

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

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

Rights of Joint Promisees

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

Example: A, in consideration of Rs. 5,00,000 rupees lent to him by B and C, promises B and C jointly to repay them that sum with interest on a specified day but B dies. In such a case right to demand payment shall rest with B's legal representatives, jointly with C during C's life-time, and after the death of C, with the legal representatives of B and C jointly.

6. Time and Place for Performance of the Promise (Sections 46 to 50)

1. Time for performance of promise, where no application is to be made and no time is specified - Section 46

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation: The expression reasonable time is to be interpreted having regard to the facts and circumstances of a particular case.

2. Time and place for performance of promise, where time is specified and no application to be made – Section 47

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

Example: If the delivery of goods is offered say after 8.30 pm, the promisee may refuse to accept delivery, for the usual business hours are over. Moreover, the delivery must be made at the usual place of business.

3. Application for performance on certain day to be at proper time and place – Section 48

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

Explanation: The question "what is a proper time and place" is, in each particular case, a question of fact.

4. Place for the performance of promise, where no application to be made and no place fixed for performance – Section 49

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

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

5. Performance in manner or at time prescribed or sanctioned by promisee – Section 50

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

7. Rules Regarding Performance of Reciprocal Promise (Sections 51 to 58)

1. Promisor not bound to perform, unless reciprocal promise ready and willing to perform- Section 51

When a contract consists 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.

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

2. Order of performance of reciprocal promises- Section 52

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

Example: A and B contract that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

3. Liability of party preventing event on which the contract is to take effect – Section 53

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of

the party so prevented; and he is entitled to compensation from the other party for any loss he may sustain in consequence of the non- performance of the contract.

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

4. Effect of default as to that promise which should be first performed, in contract consisting of reciprocal promises - Section 54

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

Example: A hires B to make a shoe rack. A will supply the plywood, fevicol and other items required for making the shoe rack. B arrived on the appointed day and time but A could not arrange for the required materials. A cannot claim the performance of B's promise, and must make compensation to B for the loss which B sustains by the non-performance of the contract.

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

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

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

Note: In a mercantile contract, the general rule in this regard is that stipulations as to time, except as to time for payment of money, are essential conditions, since punctuality is of the utmost importance in the business world. Thus, on a sale of goods that are notoriously subject to rapid fluctuation of market price,

Example: Gold, silver, shares having a ready market the time of delivery is of the essence of the contract. But in mortgage bond, the time fixed for the repayment of the mortgage money can by no means be regarded as an essential condition; consequently, the mortgaged property can be regained even after the due date.

Contract cannot be avoided where time is not essential: Where time is not essential, the contract cannot be avoided on the ground that the time for performance has expired, there the promisee is only entitled to compensation from the promisor for any loss caused by the delay. But it must be remembered that even where time is not essential it must be performed within a reasonable time; otherwise it becomes voidable at the option of the promisee.

Effect of acceptance of performance out of time: Even where time is essential the promisee may waive his right to repudiate the contract, when the promisor fails to perform the promise within the stipulated time. In that case, he may accept performance at any time other than that agreed. In such an event, he cannot claim compensation for any loss occasioned by the non-performance of the promise at the time agreed, unless at the time of acceptance of the performance he has given a notice to the promisor of his intention to claim compensation.

6. Agreement to do Impossible Act – Section 56

Section 56 contemplates various circumstances under which agreement may be void, since it is impossible to carry it out. The Section is reproduced below:

"An agreement to do an act impossible in itself is void".

Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Compensation for loss through non-performance of act known to be impossible or unlawful: where one person has promised to do something which he knew, or, with reasonable diligence, might have known, and which the promisee did not know, to be impossible or unlawful, such promisor must make compensation to such promisee for any loss which such promisee sustains through the non-performance of the promise.

Example: A agrees with B to discover treasure by magic. The agreement is void.

Analysis of Section 56

The impossibility of performance may be of the two types, namely
(a) initial impossibility, and
(b) 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.

Example: 'A', a Hindu, who was already married, contracted to marry 'B', a Hindu girl. According to law, 'A' being married, could not marry 'B'. In this case, 'A' must make compensation to 'B' for the loss caused to her by the non-performance of the contract.

i) **If known to the parties:** It would be observed that an agreement constituted, quite unknown to the parties, may be impossible of being performed and hence void.

Example: B promises to pay a sum of Rs. 5,00,000 if he is able to swim across the Indian Ocean from Mumbai to Aden within a week. In this case, there is no real agreement, since both the parties are quite certain in their mind that the act is impossible of achievement. Therefore, the agreement, being impossible in itself, is void.

ii) **If unknown to the parties:** Where both the promisor and the promisee are ignorant of the impossibility of performance, the contract is void.

Example: A contracted B to sell his brown horse for Rs. 50,000 both unaware that the horse was dead a day before the agreement.

iii) **If known to the promisor only:** Where at the time of entering into a contract, the promisor alone knows about the impossibility of performance, or even if he does not know though he 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 e.g. change in law etc. Such impossibility is called the subsequent or supervening. It is also called the post-contractual impossibility. The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

Example: 'A' and 'B' contracted to marry each other. Before the time fixed for the marriage, 'A' became mad. In this case, the contract becomes void due to subsequent impossibility and parties are discharged.

7. 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, the first set of promises is a valid contract, but the second is a void agreement.

Example: A and B agree that A will sell a house to B for Rs. 500,000 and also that if B uses it as a gambling house, he will pay a further sum of Rs. 750,000. The first set of reciprocal promises, i.e. to sell the house and to pay Rs. 500,000 for it, constitutes a valid contract. But the object of the second, being unlawful, is void.

8. 'Alternative promise' one branch being illegal- Section 58

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

Example: A and B agree that A shall pay B Rs. 1,00,000, for which B shall afterwards deliver to A either rice or smuggled opium. This is a valid contract to deliver rice, and a void agreement as to the opium.

8. Appropriation of Payments

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

1. Application of payment where debt to be discharged is indicated (Section 59): Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.

2. Application of payment where debt to be discharged is not indicated (Section 60): Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits. However he cannot apply the payment to the disputed debt.

3. Application of payment where neither party appropriates (Section 61): Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time

being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately.

9. Discharge or Termination of Contracts

A contract is said to be discharged or terminated when the rights and obligations arising out of a contract are extinguished.

Contracts may be discharged or terminated by any of the following modes:

1. Performance, i.e., by fulfilment of the duties undertaken by parties or, by tender;
2. Mutual consent or agreement.
3. Lapse of time;
4. Operation of law;
5. Impossibility of performance; and
6. Breach of contract.

1. Performance of Contracts (Section 37): It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be

i) Actual performance; or
ii) Attempted performance.

Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance, it amounts to attempted performance or tender.

2. Discharge by Mutual Agreement or Consent (Sections 62 and 63): A contract may be discharged by the agreement of all parties to the contract, or by waiver or release by the party entitled to performance. The methods stipulated under Sections 62 and 63 of the Indian Contract Act for discharging a contract by mutual consent are:

i) Novation: The parties to a contract may substitute a new contract for the old. On novation, the old contract is discharged and consequently it need not be performed. Thus, it is a case where there being a contract in existence some new contract is substituted for it either between the same parties or between different parties the consideration mutually being the discharge of old contract.

Example: A owes B Rs. 100,000. A, B and C agree that C will pay B and he will accept Rs. 100,000 from C in lieu of the sum due from A. A's liability thereby shall come to an end, and the old contract between A and B will be substituted by the new contract between B and C.

ii) Rescission: When the parties to a contract agree to rescind it, the contract need not be performed. In the case of rescission, 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. Both in novation and in rescission, the contract is discharged by mutual agreement.

iii) **Alteration:** Where the parties to a contract agree to alter it, the original contract is rescinded, with the result that it need not be performed. In other words, 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. The distinction between novation and alteration is very slender.

iv) **Remission or Waiver:** 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. In other words, a contract may be discharged by remission when promisosee is ready to aceept less than what he had agreed for. and a contract may ve discharged by waiver when promisee is ready to wiave of promisors obligation in full.

Example: A owes B Rs. 5,00,000. A pays to B, and B accepts, in satisfaction of the whole debt, Rs. 2,00,000 paid at the time and place at which the Rs. 5,00,000 were payable. The whole debt is discharged.

3. Discharge by Lapes of Time: The Limitation Act, in certain circumstance, affords a good defence to suits for breach of contract, and infact terminates the contract by depriving the party of his remedy to law.

Example: where a debtor has failed to repay the loan on the stipulated date, the creditor must file the suit against him within three years of the default. If the limitation period of three years expires and he takes no action he will be barred from his remedy and the other party is discharged of his liability to perform.

4. Discharge by Operation of the Law: Discharge under this head may take place as follows:

i) **By merger:** Sometimes, the inferior rights and the superior rights coincide and meet in one and the same person. In such cases, the inferior rights merge into the superior rights. On merger, the inferior rights vanish and are not required to be enforced.

Example: A took a land on lease from B. Subsequently, A purchases that very land. Now, A becomes the owner of the land and the ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.

ii) **By the unauthorised alteration of items of a written document:** Where a party to a written contract makes any material alteration without knowledge and consent of the other, the contract can be avoided by the other party.

iii) **By insolvency:** The Insolvency Act provides for discharge of contracts under particular circumstances.

iv) **By Death of either party:** If the contract involves personal skills, death of either party discharges the contract.

5. Discharge by Impossibility or Frustration (Section 56): A contract which is entered into to perform something that is clearly impossible is void. Sometimes subsequent impossibility (i.e. where the impossibility supervenes after the contract has been made) renders the performance of a contract unlawful and stands discharged;

Example: where a singer contracts to sing and becomes too ill to do so, the contract becomes void. A contract to do an act, which after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

Supervening impossibility may take place owing to:

i) an unforeseen change in law;
ii) the destruction of the subject-matter essential to that performance;
iii) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract.
iv) the declaration of a war.

6. Discharge by Breach: Where the promisor neither performs his contract nor does he tender performance, or where the performance is defective, there is a breach of contract. The breach of contract may be (i) actual; or (ii) anticipatory. The actual breach may take place either at the time the performance is due, or when actually performing the contract. Anticipatory breach means a breach before the time for the performance has arrived. This may also take place in two ways – by the promisor doing an act which makes the performance of his promise impossible or by the promisor in some other way showing his intention not to perform it.

Important Notes:

Unit 5 : Breach of Contract & Its Remedies

Unit Overview

- **Breach of Contract**
  - **Actual Breach**
  - **Anticipatory Breach**
- **Who Can Perform The Contract**
- **Rights & Liabilities of Joint Promisor & Promisee**
- **Time & Place of Performance**
- **Rules regarding Performance of Reciprocal Promises**
- **Appropriation of Payments**
- **Discharge of Contract**

1. What is a Breach of Contract? (Section 37)

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

Breach of contract may arise in two ways:
(1) Actual breach of contract
(2) Anticipatory breach of contract

1. Actual breach of contract: It is a case of refusal to perform the promise on the scheduled date. The parties to a lawful contract are bound to perform their respective promises. But when one of the parties breaks the contract by refusing to perform his promise, he is said to have committed a breach. In that case, the other party to the contract obtains a right of action against the one who has refused to perform his promise.
Actual breach of contract may be committed-
(a) At the time when the performance of the contract is due.

Example: A agrees to deliver 100 bags of sugar to B on 1st February 2016. On the said day, he failed to supply 100 bags of sugar to B. This is actual breach of contract. The breach has been committed by A at the time when the performance becomes due.

(b) During the performance of the contract: Actual breach of contract also occurs when during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.

2. 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. Anticipatory breach of a contract may take either of the following two ways:
(a) Expressly by words spoken or written, and
(b) Impliedly by the conduct of one of the parties.

Example: Where A contracts with B on 15th July, 2016 to supply 10 bales of cotton for a specified sum on 14th August, 2016 and on 30th July informs B, that he will not be able to supply the said cotton on 14th August, 2016, there is an express rejection of the contract.

Example: Where A agrees to sell his white horse to B for Rs. 50,000/- on 10th of August, 2016, but he sells this horse to C on 1st of August, 2016, the anticipatory breach has occurred by the conduct of the promisor.

2. Remedies for Breach of Contract

In case of breach of contract, the injured party may:

1. Sue for damages
2. Rescind the contract and refuse further performance of the contract;
3. Sue for specific performance;
4. Sue for an injunction to restrain the breach of a negative term; and
5. Sue on quantum meruit

1. Suit for 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 arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.
Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
The damages which may be awarded to the injured party may be of the following kinds:

(a) General or Ordinary damages: These are restricted to pecuniary compensation to put the injured party in the position he would have been had the contract been performed.

is the estimated amount of loss actually incurred. Thus, it applies only to the proximate consequences of the breach of the contract and the remote consequences are not generally regarded.

Example: in a contract for the sale of goods, the damages payable would be the difference between the contract price and the price at which the goods are available on the date of the breach.

(b) Special damages: Special damages are those resulting from a breach of contract under some peculiar circumstances. If at the time of entering into the contract, the party has notice of special circumstances which makes special loss the likely result of the breach in the ordinary course of things, then upon his-breaking the contract and the special loss following this breach, he will be required to make good the special loss.

Example: A delivered goods to the Railway Administration to be carried to a place where an exhibition was being held and told the goods clerk that if the goods did not reach the destination on the stipulated date he would suffer a special loss. The goods reached late. He was entitled to claim special damages.

(c) Exemplary or Punitive damages: These damages are awarded to punish the defendant and are not, as a rule, granted in case of breach of contract. In two cases, however, the court may award such damages, viz., (i) breach of promise to marry; and (ii) wrongful dishonour of a customers cheque by the banker.

Note: In a breach of promise to marry, the amount of the damages will depend upon the extent of injury to the party's feelings. In the bankers case, the smaller the amount of the cheque dishonoured, larger will be damages as the credit of the customer would be injured in a far greater measure, if a cheque for a small amount is wrongfully dishonoured.

(d) Nominal damages: Nominal damages consist of a small token award, e.g., a rupee of even 25 paise, where there has been an infringement of contractual rights, but no actual loss has been suffered. These damages are awarded to establish the right to decree for breach of contract.

(e) 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. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

(f) Pre-fixed damages: Sometimes, 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. It may amount to either liquidated damages (i.e., a reasonable estimate of the likely loss in case of breach) or a penalty (i.e., an amount arbitrarily fixed as the damages payable). Section 74 provides that if a sum is named in a contract as the amount to be paid in case of a breach, the aggrieved party is entitled to receive

from the party at fault a reasonable compensation not exceeding the amount so named (Section 74).

Example: If the penalty provided by the contract is Rs. 1,00,000 and the actual loss because of breach is Rs. 70,000, only Rs. 70,000 shall be available as damages, i.e., the amount of actual loss and not the amount stipulated. But if the loss is, say, Rs. 1,50,000, then only, Rs. 1,00,000 shall be recoverable.

2. Rescission of contract: When a party to a contract has broken the contract, the other party may treat the contract as rescinded and he is absolved from all his obligations under the contract. Under Section 65, when a party treats the contract as rescinded, he makes himself liable to restore any benefits he has received under the contract to the party from whom such benefits were received. Under Section 75 of the Indian Contract Act, if a person rightfully rescinds a contract, he is entitled to a compensation for any damage which he has sustained through the non-fulfilment of the contract by the other party.

3. Specific Performance: It means the actual carrying out by the parties of their contract, and in proper cases the Court will insist upon the parties carrying out this agreement. Where a party fails to perform the contract, the Court may, at its discretion, order the defendant to carry out his undertaking according to the terms of the contract. A decree for specific performance may be granted in addition to or instead of damages.

Specific performance is usually granted in contracts connected with land, e.g., purchase of a particular plot or house, or to take debentures in a company. In case of sale of goods, it will only be granted if the goods are unique and cannot be purchased in the market, e.g., a particular race horse, or one of special value to the party suing by reason of personal or family association, e.g., an heirloom.

Specific performance will not be ordered:

- **i)** where monetary compensation is an adequate remedy;
- **ii)** where the Court cannot supervise the execution of the contract, e.g., a building contract;
- **iii)** where the contract is for personal service; and
- **iv)** where one of the parties is a minor.

4. Injunction: An injunction, is an order of a Court restraining a person from doing a particular act. It is a mode of securing the specific performance of a negative term of the contract, (i.e., where he is doing something which he promises not to do), the Court may in its discretion issue an order to the defendant restraining him from doing what he promised not to do. Injunction may be prohibitory or mandatory. In prohibitory, the Court restrains the commission of a wrongful act whereas in mandatory, it restrains continuance of a wrongful commission.

Example: W agreed to sing at L's theatre and nowhere else. W, in breach of contract with L entered into a contract to sing for Z. Held, although W could not be compelled to sing at Ls theatre, yet she could be restrained by injunction from singing for Z.

5. Quantum Meruit: The expression "Quantum Meruit" literally means "as much as earned" or reasonable remuneration. It is used where a person claims reasonable remuneration for the services rendered by him when there was no express promise to pay the definite remuneration. Thus, the law implies reasonable compensation for the services rendered by a party if there are circumstances showing that these are to be paid for.

The general rule is that where a party to a contract has not fully performed what the contract demands as a condition of payment, he cannot sue for payment for that which he has done. The contract has to be indivisible and the payment can be demanded only on the completion of the contract.

But where one party who has performed part of his contract is prevented by the other from completing it, he may sue on a quantum meruit, for the value of what he has done.

The claim on a quantum meruit arises when one party abandons the contract, or accepts the work done by another under a void contract.

The party in default may also sue on a "quantum meruit" for what he has done if the contract is divisible and the other party has had the benefit of the part which has been performed. But if the contract is not divisible, the party at fault cannot claim the value of what he has done.

Example: A agrees to deliver 100 bales of cottons to B at a price of `1000 per bale. The cotton bales were to be delivered in two installments of 50 each. A delivered the first installments but failed to supply the second. B must pay for 50 bags.

3. Penalty and Liquidated Damages (Section 74)

The parties to a contract may provide before hand, the amount of compensation payable in case of failure to perform the contract. In such cases, the question arises whether the courts will accept this figure as the measure of damage.

English Law: According to English law, the sum so fixed in the contract may be interpreted either as liquidated damages or as a penalty. If the sum fixed in the contract represents a genuine pre-estimate by the parties of the loss, which would be caused by a future breach of the contract it is liquidated damages. It is an assessment of the amount which in the opinion of the parties will compensate for the breach. Such a clause is effective and the amount is recoverable. But where the sum fixed in the contract is unreasonable and is used to force the other party to perform the contract;

it is penalty. Such a clause of disregarded and the injured party cannot recover more than the actual loss.

Indian Law: Indian law makes no distinction between 'penalty 'and liquidated damages'. The Courts in India award only a reasonable compensation not exceeding the sum so mentioned in the contract. Section 74 of the Contract Act lays down if the parties have fixed what the damages will be, the courts will never allow more. But the court may allow less. A decree is to be passed only for reasonable compensation not exceeding the sum named by the parties. Thus, Section 74 entitles a person complaining of breach of contract to get reasonable compensation and does not entitle him 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.

Example: A contracts with B, that if A practices as a surgeon in Kolkata, he will pay B Rs. 50,000. A practice as a surgeon at Kolkata, B is entitled to such compensation not exceeding Rs. 50,000 as the court considers reasonable.

Example: A borrows Rs. 10,000 from B and gives him a bond for Rs. 20,000 payable by five yearly installments of Rs. 4,000 with a stipulation that in default of payment, the whole shall become due. This is a stipulation by way of penalty.

Example: A undertakes to repay B, a loan of Rs. 10,000 by five equal monthly installments with a stipulation that in default of payment of any installment, the whole shall become due. This stipulation is not by way of penalty and the contract may be enforced according to its terms.

Distinction between liquidated damages and penalty

Penalty and liquidated damages have one thing in common that both are payable on the occurrence of a breach of contract. It is very difficult to draw a clear line of distinction between the two but certain principles as laid down below may be helpful.

i) If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
ii) 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.
iii) 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 is as a penalty even if, it is termed as liquidated damages in the contract.

iv) 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.

v) English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

Unit 6 : Contingent & Quasi Contract

- **Contingent Contract**
- **Rules Relating to Enforcement of Contingent Contract**
- **Difference Between a Contingent and a Wagering Contract**
- **Quasi Contract**
- **Contracts which are Resembling to Quasi Contracts**

1. What is a Contingent Contract?

Definition:

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

Contract of insurance and contracts of indemnity and guarantee are popular instances of contingent contracts.

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.

Example: A contracts to pay B Rs. 100,000 if B's house is burnt. This is a contingent contract. Here the burning of the B's house is neither a performance promised as part of the contract nor it is the consideration obtained from B. The liability of A arises only on the happening of the collateral event.

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: The condition may be precedent or subsequent.

Example: 'A' promises to pay Rs. 50,000 to 'B' if it rains on first of the next month.

(b) The event referred to is collateral to the contract: The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise. Thus where A agrees to deliver 100 bags of wheat and B agrees to pay the price only afterwards, the contract is a conditional contract and not contingent; because the event on which B's obligation is made to depend is part of the promise itself and not a collateral event.

(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.

Example: If A promises to pay B Rs. 100,000, if he so chooses, it is not a contingent contract. (In fact, it is not a contract at all). However, where the event is within the promisor's will but not merely his will, it may be contingent contract.

Example: If A promises to pay B Rs. 100,000 if A left Delhi for Mumbai on a particular day, it is a contingent contract, because going to Mumbai is an event no doubt within A's will, but is not merely his will.

(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.

Example: 'A' agreed to sell his agricultural land to 'B' after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on the fulfillment of certain formalities. It was held that the contract was not a contingent contract as the grant of permission by the collector was almost a certainty.

2. Rules Relating to Enforcement of Contingent Contract (Section 32 to 36)

1. Enforcement of contracts contingent on an event happening - Section 32: Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.

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

2. Enforcement of contracts contingent on an event not happening - Section 33: Where a contingent contract is made contingent on a non-happening of an event, it can be enforced only when it's happening becomes impossible. Section 33 says that "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".

Example: Where 'P' agrees to pay 'Q' a sum of money if a particular ship does not return, the contract becomes enforceable only if the ship sinks so that it cannot return.

Example: Where A agrees to pay sum of money to B if certain ship does not return however the ship returns back. Here the contract becomes void.

3. 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 - Section 34: 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.

Example: Where 'A' agrees to pay 'B' a sum of money if 'B' marries 'C'. 'C' marries 'D'. This act of 'C' has rendered the event of 'B' marrying 'C' as impossible; it is though possible if there is divorce between 'C' and 'D'.

In Frost V. Knight, the defendant promised to marry the plaintiff on the death of his father. While the father was still alive, he married another woman. It was held that it had become impossible that he should marry the plaintiff and she was entitled to sue him for the breach of the contract.

4. Contingent on happening of specified event within the fixed time - Section 35: 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 if, before the time fixed, such event becomes impossible.

Example: A promises to pay B a sum of money if certain ship returns within a year. The contract may be enforced if the ship returns within the year, and becomes void if the ship is burnt within the year.

5. Contingent on specified event not happening within fixed time - Section 35: 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.

Example: A promises to pay B a sum of money if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

6. Contingent on an impossible event - Section 36: Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of

the event is known or not to the parties to the agreement at the time when it is made.

Example: 'A' agrees to pay 'B' Rs. One lakh if sun rises in the west next morning. This is an impossible event and hence void.

Example: X agrees to pay Y Rs. 1,00,000 if two straight lines should enclose a space. The agreement is void.

3. Difference Between Contingent Contract and Wagering Contract

Basis of difference	Contingent contract	Wagering contract
Meaning	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.
Reciprocal promises	Contingent contract may not contain reciprocal promises.	A wagering agreement consists of reciprocal promises.
Uncertain event	In a contingent contract, the event is collateral.	In a wagering contract, the uncertain event is the core factor.
Nature of contract	Contingent contract may not be wagering in nature.	A wagering agreement is essentially contingent in nature.
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 lose and gain	Contingent contract is not based on doctrine of mutuality of lose & gain.	A wagering contract is a game, losing and gaining alone matters.
Effect of contract	Contingent contract is valid.	A wagering agreement is void.

4. Quasi Contracts

A valid contract must contain certain essential elements, such as offer and acceptance, capacity to contract, consideration and free consent. But sometimes the law implies a promise imposing 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

contract in the strict sense, but the Court recognises them as relations resembling those of contracts and enforces them as if they were contracts. Hence the term Quasi –contracts (i.e. resembling a contract). 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 contract.

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

A quasi or constructive contract rest upon the maxims, "No man must grow rich out of another person's loss".

Example: T, a tradesman, leaves goods at C's house by mistake. C treats the goods as his own. C is bound to pay for the goods.

Example: A pays some money to B by mistake. B must refund the money to A.

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

Salient features of quasi contracts:

i) In the first place, such a right is always a right to money and generally, though not always, to a liquidated sum of money.
ii) Secondly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
iii) 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.

5. Contracts which are Resembling to Quasi Contracts

1. Claim for necessaries supplied to persons incapable of contracting (Section 68): 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.

Example: A supplies B, a lunatic, or a minor, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property. To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his actual requirements at the time of the sale and delivery.

2. Payment by an interested person (Section 69): 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.

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

3. Obligation of person enjoying benefits of non-gratuitous act (Section 70): In term of section 70 of the 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".

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

4. Responsibility of finder of goods (Section 71): '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.

In Hollins vs. Howler L. R. & H. L., '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. **Held,** 'F' must return the diamond to 'H' as he was entitled to retain the goods found against everybody except the true owner.

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

5. Money paid by mistake or under coercion (Section 72): "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.

Example: A payment of municipal tax made under mistaken belief or because of misunder-standing of the terms of lease can be recovered from municipal authorities. Similarly any money paid by coercion is also recoverable.

Important Notes: