



CHAPTER – 1

INTRODUCTION

The term 'contract' means, in ordinary sense, any agreement between any two persons. For business persons, making of contracts with others is a very important process to put into effect their business plans. Those who enter into contracts expect that the commitments made shall be fulfilled. The law of contracts seeks to regulate the behaviour of persons who make contracts. It also determines the circumstances under which a promise or an agreement shall be legally binding on the person making it. It also provides the remedies, which are available in a Court of Law against a person who fails to fulfil his contracts.

The law relating to contracts is contained in the Indian Contract Act, 1872. The Act came into force on the first day of September 1872, and it applies to the whole of India except the State of Jammu and Kashmir. The Contract Act is not a complete and exhaustive law on all types of contracts. It lays down general principles of contract law.

In this chapter we shall study the provisions of the Act in the following order :

Unit 1 - Nature of contracts

Unit 2 - Consideration

Unit 3 - Other essential elements of a Valid Contract

Unit 4 - Performance of contract

Unit 5 - Breach of contract

Unit 6 - Contingent and Quasi-Contracts



CHAPTER – 1

THE INDIAN CONTRACT ACT, 1872



Unit 1

Nature of Contracts

Learning Objectives

- ◆ Understand meaning of the terms 'agreement' and 'contract' and note the distinction between the two.
- ◆ Note the essential elements of contract.
- ◆ Be clear about various types of contract.
- ◆ Understand the concept of offer and acceptance and rules of communication and revocation thereof.

THE LAW OF CONTRACT : GENERAL PRINCIPLES

As a result of increasing complexities of business environment, innumerable contracts are entered into by the parties in the usual course of carrying on their business. 'Contract' is the most usual method of defining the 'give and take' rights and duties in a business transaction. This branch of Private law is different from other branches of law in a very important respect. It does not prescribe so many rights and duties, which the law will protect or enforce; it contains a number of limiting principles subject to which the parties may create rights and duties for themselves. In a sense, parties to a contract are the makers of law for themselves. They can frame any rules they desire to the subject matter of their agreements, and law takes cognizance of their decision unless they are not legally prohibited.

All agreements are not studied under the Indian Contract Act, 1872, as some of those are not contracts. Only those agreements, which are enforceable at law, are contracts. This unit refers to the essentials of a legally enforceable agreement or contract. It sets out rules for the offer and acceptance and revocation thereof. It states the circumstances when an agreement is voidable or enforceable by one party only, and when the agreements are void, i.e. not enforceable at all.

1.1 WHAT IS CONTRACT?

Section 2(h) of the Act defines the term contract "*as an agreement enforceable by law*".

Section 2(e) defines an agreement as "*every promise and every set of promises, forming the consideration for each other*". Again Section 2(b) defines promise in these words:

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

From the above, it is obvious that an agreement is a promise or a set of reciprocal promises, that a promise is the acceptance of a proposal. There must be an offer or a proposal which the other person accepts and when he accepts he knows that the acceptance will give rise to a binding contract. But as Section 2(h) requires an agreement to be worthy of being enforceable by law before it is called 'contract', there arises an important question :

On what conditions does the Indian Contract Act recognise the "agreement" of the parties (which contains a promise) as a "contract"? The answer to this question will form the subject of our discussion in this Unit.



1.2 ESSENTIAL ELEMENTS OF A VALID CONTRACT

According to Section 10, “All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.” The following essential elements must co-exist in order to make a valid contract:

1. Proper offer and proper acceptance with intention to create legal relationship.
 2. Lawful consideration.
 3. Capacity.
 4. Free consent.
 5. Lawful agreement.
1. In the first instance, the parties ought to have the *intention to create a legal obligation between them through the form of offer and acceptance*. They should have intention to impose duty on the promisor to fulfil the promise and bestow a right on the promisee to claim its fulfilment. It must not be merely a moral one but it must be legal.
 2. The second aspect to look for is the presence of “*lawful consideration*” which is an essential element of a valid contract. Consideration is a technical word meaning thereby *quid pro quo i.e. something in return*. It must result in benefit to one party and detriment to the other party or a detriment to both.

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 to sell his books and A’s promise to sell the books is the consideration for B’s promise to pay Rs. 100.

If the two essential elements are there we can say that there is a contract which *prima-facie* will hold good; or at least we can say that there is an existence of contract, although some more necessary elements of validity may be required.

3. Thirdly, the parties to a contract must have the capacity (legal ability) to make a valid contract. In every case there must be assent of the parties. The assent presupposes a free, fair, and serious exercise of the reasoning faculty. If, therefore, either of the parties to an agreement is deprived of the use of his understanding, or if he be deemed by law not to have attained it, there can be no such agreement which shall bind him. Section 11 of the Indian Contract Act specifies that every person is competent to contract provided,
 - (a) he is of the age of majority according to the law to which he is subject and
 - (b) he is of sound mind and
 - (c) he is not disqualified from contracting by any law to which he is subject.

In other words (a) a minor, (b) a person of unsound mind (a person of unsound mind can enter into a contract during his lucid intervals) and (c) a person disqualified from contracting by any law to which he is subject, e.g. alien enemy, foreign sovereigns and accredited representatives of a foreign state, insolvents and convicts are not competent to contract.

- The consent of the parties must be genuine. The term 'consent' means parties to a contract must agree upon the same thing in the same sense, i.e. there should be consensus-ad-idem. Consent is said to be not free when it is vitiated by coercion, undue influence, fraud, misrepresentation or mistake. In such cases, the contract becomes voidable at the option of the party whose consent is not free.

Example: A threatened to shoot B if he (B) does not lend him Rs. 2,000 and B agreed to it. Here the agreement is entered into under coercion and hence voidable at the option of B.

- The agreement must not be one, which the law declares to be either illegal or void.* A void agreement is one, which is without any legal effects. Illegal agreement is an agreement expressly or impliedly prohibited by law.

Example: Agreements in restraint of trade, marriage, legal proceedings etc. are void agreements. Those agreements prohibited by the Indian Penal Code e.g. Threat to commit murder or publishing defamatory statements or agreements which are opposed to public policy are illegal in nature.

1.3 TYPES OF CONTRACT

- Void Contract :** It is a contract without any legal effect and cannot be enforced in a Court of Law. Section 2(j) defines a void contract as "*a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable*".

Examples : Where both parties to an agreement are under a mistake of fact, (Section 20), when the consideration or object of an agreement is unlawful, (Section 23), an agreement made without consideration, (Section 25), agreement in restraint of marriage (Section 26), trade (Section 27), legal proceedings (Section 28), agreement by way of wager (Section 30) are instances of void contract.

- Voidable Contract :** As per Section 2(i), "*an agreement which is enforceable by law at the option of one or more the parties but not at the option of the other or others is a voidable contract.*"

Examples : A contract brought about as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused by any one of these factors.

Void and Voidable contract : Distinction

- Definition :** As per Section 2(j) and (i), a contract which ceases to be enforceable by law becomes void when it ceases to be enforceable and a voidable contract is an agreement which is enforceable by law at the option of one or more of the parties thereon, but not at the option of other or others.
- Nature :** A void contract is valid when it is made but subsequently becomes unenforceable on certain grounds such as supervening impossibility, subsequent illegality, repudiation of a voidable contract, a contingent contract depending upon happening of an uncertain event, when occurrence of such event becomes impossible.



A voidable contract on the other hand is voidable at the option of the aggrieved party, and remains valid until rescinded by him. Contract caused by coercion, undue influence, fraud, misrepresentation are voidable. But in case contract is caused by mistake it is void.

- (c) *Rights* : A void contract does not provide any legal remedy for the parties to the contract. They even cannot get it performed when they so desire. The aggrieved party in a voidable contract gets a right to rescind the contract. When such party rescind it, the contract becomes void. In case aggrieved party does not rescind the contract within a reasonable time, the contract remains valid.
3. *Illegal contract* : It is a contract which the law forbids to be made. The Court will not enforce such a contract and also connected contracts. All illegal agreements are void but all void agreements or contracts are not necessarily illegal.

Examples : Contract to commit crime. Contract that is immoral or opposed to public policy are illegal in nature.

Void and Illegal agreements : distinction.

According to Section 2 (g) of the Indian Contract Act, 1872 an agreement not enforceable by law is void. The Act has specified various factors due to which an agreement may be considered as void agreement. One of these factors is unlawfulness of object or consideration of the contract i.e., illegality of the contract which makes it void. Despite the similarity between an illegal and a void agreement that in either case the agreement is void and cannot be enforced by law, the two differ from each other in the following two respects :

- (a) *Scope* : An illegal agreement is always void while a void agreement may not be illegal being void due to some other factor e.g., an agreement the terms of which are not certain is void but not illegal.
- (b) *Effect on collateral transaction* : If an agreement is merely void and not illegal, the collateral transactions to the agreement may be enforced for execution but collateral transaction to an illegal agreement also becomes illegal and hence cannot be enforced.
- (c) *Punishment* : Unlike illegal agreements, there is no punishment to the parties to a void agreement.
- (d) *Void-ab-initio* : Illegal agreements are void from the very beginning, but sometimes valid contracts may subsequently become void.
4. *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.

Contracts may also be classified according to formation namely, Express Contracts and Implied Contracts.

5. *Express Contracts* : A contract which is made by words either spoken or written is said to be an express contract. According to Section 9, insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express.

6. *Implied Contract* : By implied contract means implied by law (i.e.) the law implies a contract though parties never intended. According to Section 9, insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. For example, A delivers by mistake goods at B's warehouse instead of at C's place. Here there is an obligation on the part of B to return the goods to A, though they never intended to enter into a contract.
7. *Tacit Contract* : A contract is said to be tacit when it has to be inferred from the conduct of the parties. Examples: obtaining cash through automatic teller machine, sale by fall of a hammer at an auction sale.

Besides contracts may be classified on the basis of performance. Such contracts may be executed, executory, unilateral and bilateral.
8. *Executed Contract* : If the consideration for the promise in a contract (i.e., any act or forbearance) is given or executed, such type of contract is called contract with executed consideration.
9. *Executory Contract* : It is so called because the reciprocal promises or obligation which serves as consideration is to be performed in future.
10. *Unilateral Contract* : A unilateral contract is a one-sided contract in which only one party has to perform his promise or obligation to do or forbear.
11. *Bilateral Contract* : Where the obligation or promise in a contract is outstanding on the part of both the parties, it is known as the bilateral contract.

Formal Contracts :

The English Law classifies the contract into (i) formal contracts and (ii) simple contracts.

Formal Contracts include (a) Contract of Record and (b) Contract under Seal.

- (a) **Contract of Record** : A contract of record is either a judgement of a court or a recognisance. A judgement is an obligation imposed by a Court upon one or more persons in favour of other or others. As a matter of fact, it is not a contract in the real sense, since it is not based upon any agreement between the two parties. A recognisance is a written acknowledgement of a debt due to the State. It is usually met with the connection with criminal proceedings.

Contracts of record derive their binding force from the authority of the Court.
- (b) **Contract under Seal** : A contract under seal is one, which derives its binding force from its form alone. It is written and is signed, sealed and delivered by the parties. It is also called a deed or a speciality contract.

Now we shall discuss the term 'offer' and 'acceptance' referred to earlier, in detail.

1.4 PROPOSAL/OFFER

The words proposal and offer are used interchangeably and it is defined under Section 2(a) of the Indian Contract Act, 1872 as "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." Thus, for a valid offer, the party making it must express his



willingness 'to do' or 'not to do' something. But a mere expression of willingness does not constitute an offer. For instance, where 'A' tells 'B' that he desires to marry by the end of 2004, 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. Thus "doing" is a positive act and "not doing", or "abstinence" is a negative act; nonetheless both these acts have the same effect in the eyes of law.

Classification of Offer :

- (a) *General Offer* : It is an offer made to the public in general and hence anyone can accept and do the desired act. Section 8 of the Indian Contract Act, 1872 points out that performance of the conditions of a proposal is an acceptance of the proposal.
- (b) *Special Offer* : When offer is made to a definite person, it is known as specific offer and such offer can be accepted only by that specified person.
- (c) *Cross Offers* : When two parties exchange identical offers in ignorance at the time of each other's offer, the offers are called Cross offers. There is no binding contract in such a case, as one's offer cannot be construed as acceptance by the other.
- (d) *Counter Offer* : When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer.
- (e) *Standing, Open or Continuing offer* : An offer is allowed to remain open for acceptance over a period of time is known as a standing, open or continuing offer. Tender for supply of goods is a kind of standing offer.

Rules as to offer :

- (a) The offer must be capable of creating legal relation : A social invitation, even if it is accepted, does not create legal relations because it is not so intended. An offer, therefore, must be such as would result in a valid contract when it is accepted.
- (b) The offer must be certain, definite and not vague : If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship. Thus, where A offers to sell B a 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. But if the agreement contains a reference for ascertaining a vague term, the agreement is not void on the ground of its being vague. If in the above example, A is a dealer in coconut oil only, it shall constitute a valid offer since the nature of A's trade affords an indication as to which oil is being offered.
- (c) The offer may be expressed or implied.
- (d) The offer must be distinguished from an invitation to offer.
- (e) An offer may be specific or general.
- (f) The offer must be communicated : An offer, to be complete, must be communicated to the person to whom it is made. 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 create any right on the acceptor.

- (g) The offer must be made with a view to obtaining the consent of the offeree.
- (h) An offer may be conditional.
- (i) The offer should not contain a term the non compliance of which would amount to acceptance. Thus a man cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.

Offer and Invitation to Offer : An offer should be distinguished from an invitation to offer. An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result in contract and only an offer emerges in the process of negotiation.

When a person advertises that he has a stock of books to sell or houses to let, there is no offer to be bound by any contract. Such advertisements are offers to negotiate-offers to receive offers. In order to ascertain whether a particular statement amount to an 'offer' or an 'invitation to offer', the test would be the intention with which such statement is made. Does the person who makes the statement intend to be bound by it as soon as it is accepted by the other, or he intends to do some further act, before he becomes bound by it? In the former case, it amounts to an offer and in the latter case, it is an invitation to offer.

1.5 ACCEPTANCE

(A) Meaning : A proposal or offer is said to have been accepted when the person to whom the proposal is made signifies his assent to the proposal to do or not to do something [Section 2 (b)].

The rules regarding acceptance are :

1. **Acceptance must be absolute and unqualified :** As per Section 7 an acceptance is valid when it is absolute and unqualified and is expressed in some usual and reasonable manner, unless the proposal prescribed the manner in which it is to be accepted. Thus, if A enquires from B, "will you purchase my dog for Rs. 100" ? and B replies, "I shall purchase your dog for Rs. 100 provided you purchase my cat for Rs. 60". B in such a case would not be said to have accepted the proposal of A. Also an acceptance with a variation is no acceptance. It is simply a counter proposal which shall have to be accepted by the original proposer before a contract can be deemed to have come into existence. A counter proposal is the offer by the offeree and can result in a contract only if it is accepted by the other party.
2. **Communicated to Offeror:** It must further be remembered that an acceptance must be communicated to the person who made the offer. An offer made by the intended offeree without the knowledge that an offer has been made to him cannot be deemed as an acceptance thereto.
3. **Acceptance must be in the mode prescribed:** 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, the proposer is presumed to have consented to the acceptance.

4. **Time:** Acceptance must be given within a reasonable time and before the offer lapses.
5. Mere silence is not acceptance
6. **Acceptance by conduct:** The assent means that acceptance has been signified either in writing or by word of mouth or by performance of some act. 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. For 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 tradesman subsequently by sending the goods. It is a case of acceptance by conduct.

1.6 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. 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 : The communication of an offer is complete when it comes to the knowledge of the person to whom it is made (Sect. 4). An offer may be communicated either by words spoken or written or it may be inferred from the conduct of the parties.

When a proposal is made by post its communication will be complete when the letter containing the proposal reaches the persons to whom it is made. For example, A makes a proposal to B to sell his house for Rs. two lakhs. The letter is posted on 10th March. This letter reaches B on 12th March. The offer is said to have been communicated on 12th, when B receives the letter.

Communication of acceptance : Communication of an acceptance is complete :

- (i) as against the proposer, when it is put in 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.

When 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.

1.7 REVOCATION OF OFFER AND ACCEPTANCE

Under Section 4, the communication of a revocation 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;
- (ii) as against the person to whom it is made, when it comes to his knowledge.

Let us consider the illustration. If you (proposer) revoke your proposal by a telegram, the revocation will be complete so far as you are concerned, when you have dispatched the telegram. However, in so far as I (acceptor) am concerned, it will be complete when I actually receive the telegram. As regards the revocation of acceptance, I revoke my acceptance by a telegram my revocation of acceptance is complete as against myself, as soon as I have dispatched the telegram, and as against you when it reaches you.

Under Section 5, a proposal may 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.

The law relating to the revocation of an offer is the same in India as in England, but the law relating to the revocation of acceptance is different. In India, acceptance by a letter can be revoked by a telegram, if it reaches earlier than, or at the same time as the letter, but in England acceptance once posted cannot be revoked subsequently even by a telegram, even if it reaches earlier than the letter.

1.8 SUMMARY

Contract : A Contract is an agreement enforceable by law [Section 2(h)]. An agreement is enforceable by law, if it is made by the free consent of the parties who are competent to contract and the agreement is made with a lawful object and is for a lawful consideration, and is not hereby expressly declared to be void. [Section 10]. All contracts are agreements but all agreements are not contracts. Agreements lacking any of the above said characteristics are not contracts. A contract that ceases to be enforceable by law is called 'void contract', [Section 2(j)] but an agreement which is enforceable by law at the option of one party thereto, but not at the option of the other is called 'voidable contract' [(Section 2(i))].

Offer and Acceptance : Offeror undertakes to do or to abstain from doing a certain act if the offer is properly accepted by the offeree. Offer may be expressly made or may even be implied in conduct of the offeror, but it must be capable of creating legal relations and must intend to create legal relations. The terms of an offer must be certain or at least be capable of being made certain.

Acceptance of an offer must be absolute and unqualified and must be according to the prescribed or usual mode. If the offer has been made to a specific person, it must be accepted by that person only, but a general offer may be accepted by any person.

Communication of offer and acceptance, and revocation thereof

- (a) Communication of an offer is complete when it comes to the knowledge of the offeree.
- (b) Communication of an acceptance is complete : As against the offeror when it is put in the course of transmission to him and as against the acceptor, when it comes to the knowledge of the offeror.
- (c) Communication of revocation of an offer or acceptance is complete : As against the person making it, when it is put into a course of transmission so as to be out of power of the person making it and as against the person to whom it is made, when it comes to his knowledge.

CHAPTER – 1

THE INDIAN CONTRACT ACT, 1872



Unit 2

Consideration

Learning objectives

- ◆ Understand the concept of consideration, its importance for a contract and its double aspect.
- ◆ Clearly understand how consideration may move from a third party and how this makes the contract valid.
- ◆ Learn about the peculiar circumstances when a contract is valid even without consideration.
- ◆ Be aware of the rule 'A stranger to a contract cannot sue' and exceptions thereof.

Consideration is an essential element of a contract without which no single promise will be enforceable. Having a double aspect of a benefit to the promisor and a detriment to the promisee, it has to be really understood in the sense of some detriment as envisaged by English Law. In this Unit we shall examine the terms of the Indian definition and try to understand the concept of consideration, and also the legal requirements regarding consideration.

1.9 WHAT IS CONSIDERATION ?

Consideration is, in a sense, the price agreed to be paid by the promisee for the obligation of the promisor. Consideration has, therefore, been defined in an English judgement as "some right, interest, profit or benefit accruing to one party (i.e., promisor) or forbearance, detriment, loss or responsibility given, suffered or undertaken by the other (i.e., the promisee)" at the request of the promisor. Section 2(d) defines consideration as follows: "*When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise*".

- (1) That is to say, consideration is the doing or not doing of something which the promisor desires to be done or not done.
- (2) Consideration must be at the desire of the promisor.
- (3) Consideration may move from promisee or any other person.
- (4) Consideration may be past, present or future.
- (5) Consideration need not be adequate, but should be real.

For example, A promises to carry B's goods free of charge, and B allows A to carry the same. Here A will be the promisor and B will be the promisee. The question that arises in this case is does B offer any consideration as against A's promise to carry his goods ? The answer must be in the affirmative, because the detriment or the disadvantage which B suffers in parting with the goods so that goods may be carried by A is sufficient consideration as against A' promise to carry. So the essence of consideration is detriment suffered or burden taken by the promisor. The promisor may or may not derive any benefit from the consideration given by the promisee. But in most cases, the promisor derives some benefit from the consideration which may be said to be quid pro que from the promise of the promisor.



1.10 LEGAL REQUIREMENTS REGARDING CONSIDERATION

- (i) *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. An act done at the desire of a third party is not a consideration.
- (ii) *Consideration from promisee or any other person* : In India, consideration may proceed from the promisee or any other person who is not a party to the contract. The definition of consideration as given in Section 2(d) makes that proposition clear. According to the definition, when at the desire of the promisor, the promisee or any other person does something such an act is consideration. In other words, *there can be a stranger to a consideration but not stranger to a contract.*
- (iii) *Executed and executory consideration* : A consideration which consists in the performance of an act is said to be executed : When it consist 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. For 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.
- (iv) *Past Consideration* : The words “has done or abstained from doing” [as contained in Section 2(d)] are a recognition of the doctrine of past consideration. In order to support a promise, a past consideration must be moved by a previous request. It is the 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.
- (v) *Adequacy of consideration*: Consideration need not be any particular value. It need not be approximately equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value.

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.

- (vi) *Performance of what one is legally bound to perform* : The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration. Hence such a contract is void for want of consideration. Similarly, an agreement by a client to pay to his counsel after the latter has been engaged, a certain sum over and above the fee, in the event of success of the case would be void, since it is without consideration.

But where a person promises to do more than he is legally bound to do, such a promise provided it is not opposed to public policy, is a good consideration.

- (vii) *Consideration must not be unlawful, immoral, or opposed to public policy.*

1.11 SUIT BY A THIRD PARTY ON AN AGREEMENT

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

The aforesaid rule is, however, subject to the following exceptions:

- (1) In the case of trust, a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- (2) In the case of a family settlement, if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
- (3) In the case of certain marriage contracts, a female member can enforce a provision for marriage expenses, made on the partition of the Hindu undivided family.
- (4) In the case of assignment of a contract, when the benefit under a contract has been assigned, the assignee can enforce the contract.
- (5) In the case of an estoppel by acknowledgement of liability or part performance thereof, that is when, one admits the liability. For example, if L gives to M Rs. 2,000 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.
- (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.

1.12 VALIDITY OF AN AGREEMENT WITHOUT CONSIDERATION

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

1. **Natural Love and Affection** : A written and registered agreement based on natural love and affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration.
2. **Compensation for past voluntary services** : A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under Sec. 25(2). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist :
 - (i) The services should have been rendered voluntarily.
 - (ii) The services must have been rendered for the promisor.
 - (iii) The promisor must be in existence at the time when services were rendered.



- (iv) The promisor must have intended to compensate the promisee.
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)].
 4. **Agency :** According to Section 185 of the Indian Contract Act, 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.

1.13 SUMMARY

The students may note that :

- (a) Consideration is a price for the promise of the other party and it may either be in the form of ‘benefit’ or some ‘detriment’ to the parties.
- (b) Consideration must move at the desire of the promisor.
- (c) It may be executed or executory.
- (d) Past consideration is valid provided it moved at the previous request of the promisor.
- (e) It must not be something which the promisor is already legally bound to do.
- (f) It may move from the promisee or any third party.
- (g) Inadequacy of consideration is not relevant.
- (h) Consideration must be legal.
- (i) The general rule of law is “No Consideration, No Contract” but there are a few exceptional cases where a contract, even though without consideration is valid.
- (j) In some exceptional cases the contract may be enforced by a person who is not a party to the contract.

CHAPTER – 1

THE INDIAN CONTRACT ACT, 1872



Unit 3

Other
Essential
Elements
of a Valid
Contract



Learning objectives

- ◆ Note the various ingredients of incapacity to contract.
- ◆ Be clear about the legal consequence of contract with a minor.
- ◆ Be familiar with the concept of 'consensus ad idem' i.e. parties agreeing upon the same thing in the same sense.
- ◆ Try to grasp the characteristics of different elements vitiating free consent and particularly distinguish among fraud, misrepresentation and mistake.
- ◆ Understand the circumstance when object and consideration become unlawful.
- ◆ Be aware of the agreements opposed to public policy.

It has already been discussed that an agreement results from a proposal by one party and its acceptance by another. We have also discussed offer, acceptance and consideration in detail. We shall now discuss in detail the elements which constitute a valid contract enforceable in law.

Section 10 of the Indian Contract Act provides that an agreement in order to be a contract, must satisfy the following conditions:

- (1) it must be made by the free consent of the parties;
- (2) the parties must be competent to contract;
- (3) it must be made for a lawful consideration and with a lawful object;
- (4) it should not have been expressly declared as void by law.

Also, there must be consensus *ad idem* or identity of minds in the sense that parties have agreed about the subject matter of the contract at the same time and in the same sense, as evidenced by offer and acceptance (Section 13). It has also been observed that the agreement must import an intention to create a legal relationship between the parties, and that agreements relating to social matters are not enforceable by law.

1.14 CAPACITY TO CONTRACT

Who is competent to contract? Every person who (a) has attained the age of majority, (b) is of sound mind and (c) is not otherwise disqualified from contracting, is competent to contract. (Section 11)

- (a) **Age of majority** : In India, the age of majority is regulated by the Indian Majority Act (Act IX of 1875). Every person domiciled in India attains majority on the completion of 18 years of age.
- (b) **Sound mind** : A person is said to be of sound mind for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interests.

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.

(a) Position of Minor's agreement

1. **An agreement entered into by a minor is altogether void :** The word void when used in relation to a minor it should be understood as "void as against the minor". Contract with or by a minor is altogether void. The Indian Contract Act simply says that only a person who is a major is competent to contract. The main reason for holding a minor's agreement void is that where an agreement by a minor involves a promise on his part or his promise is a necessary part of the agreement it is void because a minor is incapable of giving a promise imposing a legal obligation.
2. **Minor can be a beneficiary :** Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, a promissory note duly executed in favour of a minor is not void and can be sued upon by him, because he is though incompetent to contract, may yet accept a benefit.

A minor cannot become a partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership (Section 30 of the Indian Partnership Act, 1932).

3. **Minor can always plead minority :** A minor's contract being void, any money advanced to a minor on a promissory note or otherwise, cannot be recovered. Even when a minor procures a loan by falsely representing that he is full age, it will not stop him from pleading his minority in a suit to recover the amount and the suit will be dismissed.

But where a minor had fraudulently mortgaged and sold certain properties, the Court held that on the cancellation of the agreement at the instance of the minor the lender and purchaser must be compensated.

4. **Ratification on attaining majority is not allowed :** As a minor's agreement is void he cannot validate it by ratification on attaining majority. For instance, a minor borrows money and executes a promissory note. On attaining majority, he executes a fresh promissory note in substitution of the one executed as a minor. The second promissory note is also void being without consideration. But a person who supplies necessaries of life to a minor or to one whom the minor is legally bound to support, according to his situation in life, is entitled to be reimbursed from the property of the minor not on the basis of any contract but on the basis of an obligation resembling a contract (Section 68). However, a minor's property is liable for necessaries and no personal liability is incurred by him.
5. **Contract by guardian - how far enforceable :** Though a minor's agreement void, his guardian can, under certain circumstances enter into a valid contract on the 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 a valid contract which the minor can enforce. For instance, a guardian can make an enforceable contract of marriage for a minor.



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 contract 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.

6. **Liability for necessaries** : Under Section 68, any person would be entitled to reimbursement out of the minor's estate, for necessaries supplied to him or to his family. Necessaries as defined by the English Sale of Goods Act, also means, goods suitable to the condition in the life of infant as required by him at the time of sale of delivery. It includes not only food and clothing but also education and instruction. Necessaries also include 'goods' and 'services'. If minor had obtained payment fraudulently by concealment of age, he may be compelled to restore the payment, but he cannot be compelled for an identical sum, if any, as it would amount to enforcing a void contract.

- (b) **Contract by a person of unsound mind** : A person of unsound mind too is, under the Indian Contract Act, incapable of entering into a contract. Although a contract by a person who is not of sound mind is void, such a person can enter into a valid contract during an interval of lucidity. The test of unsoundness of mind is whether or not the person is capable of understanding the business and of forming a rational judgement as to its effect upon his interest. Idiots, lunatics and drunken persons are examples of those having an unsound mind.

The presence or absence of the capacity mentioned in this Section at the time of making the contract is in all cases a question of fact. Where a person is usually of sound mind, the burden of proving that he was of unsound mind at the time of execution of a document lies on him who challenges the validity of the contract.

For example, a patient in a lunatic asylum, who is at intervals of sound mind may contract during such intervals.

The liability for necessaries of life supplied to persons of unsound mind is the same as for minors (Section 68).

- (c) **Contract by disqualified persons** : 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 a person are void. If, by any provincial legislation, a person is declared 'disqualified proprietor', he is not competent to enter into any contract in respect of the property.

An alien enemy, during war, cannot enter into a contract with an Indian subject. He cannot sue in Indian Courts without a licence from the Central Government either, this disability being a matter of public policy. Similarly, a statutory corporation cannot enter into a contract which is ultra vires its memorandum. Likewise, municipal bodies are disqualified from entering into contracts, which are not within their statutory powers.

Sovereign States, Ambassadors and Diplomatic Consuls enjoy certain special privileges with the result that they cannot be legally proceeded against in Indian Courts. However, they can, at their will enter into contracts, which may be enforceable in Indian Courts.

1.15 FREE CONSENT

According to Section 13, “two or more persons are said to have consented when they agree upon the same thing in the same sense (Consensus-ad-idem). 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 the 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.

As it has been said already, 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. Consent is free when it is not caused by coercion, undue influence, fraud, misrepresentation or mistake (Section 14). When consent is not caused by any of these factors, it is said to have been freely given. When consent is not free due to mistake, the agreement is void but in all other cases, the contract is voidable at the option of the party whose consent was obtained by coercion, etc.

1.16 ELEMENTS VITIATING FREE CONSENT

We shall now explain these elements one by one.

- (a) **Coercion : Section (15) :** “Coercion” is the committing, or threatening to commit, any act forbidden by the Indian Penal Code (45 of 1860), 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. For example, X says to Y: “I shall kill your son, or I shall not return the documents of title relating to your wife’s property, unless you agree to sell your house to me for Rs. 5,000”. Y says, “All right, I shall sell my house to you for Rs. 5,000 : do not kill my son or do not detain my wife’s documents of title”. X has employed coercion; he cannot therefore enforce the contract. However, Y can enforce the contract if he finds the contract to his benefit. An agreement induced by coercion is voidable and not void. That means it can be enforced by the party coerced, but not by the party using coercion.

Where a 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.

A person to whom money has been paid or anything delivered under coercion, must repay or return it. (Section 71).

- (b) **Undue influence (Section 16) :** A contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to



dominate the will of the other and uses that position to obtain an unfair advantage of the other. A person is deemed to be in a position to dominate the will of the other, when he holds authority real or apparent over the other, or when he stands in a fiduciary relation to the other.

Examples: 1. A father, by reason of his authority over the son can dominate the will of the son. 2. Again by reason of fiduciary relationship, a solicitor can dominate the will of his client and 3. A trustee can dominate the will of the beneficiary. 4. Similarly, a person whose mental capacity is affected by age, illness or distress may be a prey to undue influence. For instance, a doctor is deemed to be in a position to dominate the will of his patient enfeebled by protracted illness.

The essential ingredients under this provision are:

- (i) One of the contracting parties dominates the will of another, or has a real or apparent authority over the other, or stands in a fiduciary position to the other. That means one party is dominating the other party.
 - (ii) The dominating party has taken an unfair advantage over the weaker party.
- (c) **Fraud (Section 17)** : As per the Act "Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance or by his agent with intent to deceive another party thereto or his agent, or to induce him to enter into the contract :
- (i) the suggestion, as to 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 declared to be fraudulent.

The fraud, which results into a contract, is only covered by this section. Any fraud committed by a party which does not lead the other party to enter into a contract is not covered by this section.

Mere silence amounting to fraud? Mere silence as to facts likely to affect the willingness of a person to enter into a contract is no fraud; but where it is the duty of a person to speak, or his silence is equivalent to speech, silence amounts to fraud. [Read the illustrations under the Explanation to Section 17 of the Indian Contract Act.]

Exceptions to this rule :

- (i) Where the circumstances of the case are such that, regard being had to them, it is the duty of the person keeping silence to speak. Duty to speak arises when one contracting party reposes trust and confidence in the other or where one party has to depend upon the good sense of the other (e.g. Insurance Contract).
 - (ii) Where the silence is in itself, equivalent to speech.
- (d) **Misrepresentation (Section 18)**: Where a person asserts something, which is not true, though he believes it to be true, his assertion amounts to misrepresentation. Misrepresentation may be either innocent or without reasonable ground. Misrepresentation

is a misstatement of facts by one, which misleads the other who, consequently, can avoid the contract. For 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, because the information received second-hand did not warrant A to make the positive statement to B [Section 18(1)].

Distinction between Coercion and Undue influence :

<i>Coercion</i>	<i>Undue Influence</i>
(a) 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.
(b) It involves committing or threatening to commit an 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.
(c) 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.
(d) Coercion need not proceed from the promisor nor need it be directed against the promisor.	Undue influence is always exercised between parties to the contract.
(e) The contract is voidable at the option of the party whose consent has been obtained by the coercion or enforce it in a modified form.	Where the consent is induced by undue influence, the contract is either voidable or the court may set it aside.
(f) 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.

Distinction between fraud and misrepresentation : The principal difference between fraud and misrepresentation is that in the case of fraud the person making representation does not believe it to be true. And in the case of misrepresentation he believes it to be true. However, in both cases, it is mis-statement of fact, which misleads the other party. Again fraud not only affords a ground for avoiding the contract, it also enabled the party defrauded to bring an action in tort for damages, whereas misrepresentation merely affords a ground for avoiding the contract and not for bringing an action in tort. When a recession is claimed, it is only necessary to prove that there was a misrepresentation then, however honestly it



may have been made, however, free from blame the person who made it may be, the contract, having been obtained by misrepresentation, cannot stand. However, in order to sustain an action for deceit, there must be proof of fraud; and fraud is proved only when it is shown that a false statement has been made knowingly or without belief in its truth, or recklessly, carelessly whether it is true or false. Again in case of misrepresentation the fact that the plaintiff had that means of discovering the truth by exercising ordinary diligence, can be a good defence against the repudiation of the contract, whereas such a defence cannot be set up in the case of fraud other than fraudulent silence [Exception to Section 19].

Misrepresentation as to law : Misrepresentation as to a fact renders a contract, voidable whereas misrepresentation as to law does not, ordinary, make the contract voidable. But a deliberate misrepresentation in the matter of law is certainly a cause for avoiding a contract.

Consequences of coercion, fraud, misrepresentation etc. (Section 19) : It has already been considered that when consent to an agreement is caused by coercion, undue influence, fraud or misrepresentation, though the agreement amounts to a contract, such a contract is voidable at the option of the party whose consent was so obtained. The party, however, may insist that the contract should be performed, and that he should be put in the same position in which he would have been, if the representation made had been true. For instance, A fraudulently informs B that A's estate is free from encumbrance. B thereupon agrees to buy the estate. The estate is, however, subject to mortgage. B may either avoid the contract, or may insist on its being carried out and the mortgage-debt redeemed.

But a person who had the means of discovering the truth with ordinary diligence cannot avoid a contract on the ground that his consent was caused by misrepresentation or silence amounting to fraud. For example, A by a misrepresentation leads B to believe erroneously that 750 tons of sugar are 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.

Where a party to a contract perpetrates fraud or misrepresentation, but the other party is not, in fact, misled by such fraud or misrepresentation, the contract cannot be avoided by the latter. (Explanation to Section 19). Thus when a seller of specific goods deliberately conceals a fault in order that the buyer may not discover it even if he inspects the goods but the buyer does not in fact, make any inspection, the buyer cannot avoid the contract, as he is not in fact deceived by the conduct of the seller.

A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination. Accordingly, the car was sold. However, the father of the student persuaded him to sue his teacher. State on what ground the student can sue the teacher?

Yes, A can sue his teacher on the ground of undue influence under the provisions of the Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

(e) **Mistake as per Section 20 :** When both the parties to an agreement are under a mistake to

a matter of fact essential to the agreement the agreement is altogether void. The Court will enforce a voidable contract if not avoided, but will not recognise an agreement that is void. For instance, A agrees to sell to B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that before the day of the bargain, the ship conveying the cargo had been cast away and the goods lost. Neither of the parties was aware of these facts. The agreement was void. Both the parties must be under a mistake. A unilateral mistake, that is to say, mistake of one party, does not render the agreement void (Section 22). A agrees to purchase from B 18 carat gold thinking to be pure gold; B has not been instrumental in the creation of such an impression. It is a valid contract between A and B.

Notice that the mistake must be as to a fact, not law. A and B wrongly believed that a particular debt is not barred by the Law of Limitation and on the basis of such belief enter into a contract. The contract is valid, mistake being not of fact but of law. A question of foreign law is, however, a question of fact. Again, the existence of a particular private right is a matter of fact, though depending on rules of law. Thus, a man's promise to buy property which, unknown to him already belongs to him is not binding on him.

Further, the mistake must be as to an essential fact. Whether the fact is essential or not depends on whether a reasonable man would regard the fact as an essential in the circumstances. A mere wrong opinion as to the value is not an essential fact. For instance, A and B both believe that a particular kind of rice is being sold in the market at Rs. 1,780 per quintal and A sells rice of that kind to B at Rs. 1,780 per quintal. But, in fact, the market price was Rs. 1,900. The contract is valid.

Mistake renders the agreement void; neither party can enforce the contract against the other. (You should carefully consider the difference in the effect of coercion, undue influence, fraud and misrepresentation, on the one hand, and the effect of a mistake, on the other, on an agreement.)

1.17 LAWFUL OBJECT AND THE CONSIDERATION

We shall now discuss the next two ingredients of a valid contract, viz., lawful object and lawful consideration. There are certain provisions of law, which is general in character are applicable to the community as a whole. Subject thereto, an individual generally has the right to adjust his rights and obligations as he may wish. However, this contractual freedom or the right of individuals to make an agreement what in effect is law between themselves, is not absolute. In other words, there is a limitation on the contractual freedom of an individual. The necessity for it will be clear from the following illustration: Suppose, A agrees to pay Rs. 100 to B on B's stealing C's purse. In this case, the Court obviously cannot compel A to pay B, if B has stolen the purse because it will be encouraging theft which is hit by the Indian Penal Code.

Object means purpose or design. The term 'consideration' is defined in Section 2(d) and the various forms it may take have been considered earlier in this Study Module. Where A agrees to sell goods to B, and B, who is insolvent assigns the benefit of the contract for Rs. 100 with a view to defrauding his creditors, the consideration for the assignment; viz., the sum of Rs. 100 is lawful but the object viz., defrauding the creditors, is unlawful as it is intended to defeat the provisions of the insolvency law.



1.18 UNLAWFUL OBJECT

The limits to contractual freedom are set out in Section 23 of the Act. An agreement, the object or consideration of which is unlawful is void. "Consideration or object is unlawful if it is forbidden by law; or it would; if permitted defeat the provisions of any or law or is fraudulent; or involves injury to the person or property of another, or is immoral; or opposed to public policy."

In the following examples, the agreement is void because the object is unlawful:

- (1) A, B and C enter into an agreement for the division among them of gains acquired or to be acquired by fraud. The agreement is void, as its object, viz., acquisition of gains by fraud is unlawful.
- (2) 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.

1.19 UNLAWFUL CONSIDERATION

The following is an example of the agreement which is void because of unlawful consideration.

A promises to obtain for B an employment in the public service and B promises, in return, to pay Rs. 1,000 to A. The agreement is void, as the consideration thereof is unlawful. Here A's promise to procure for B an employment in the public services is the consideration for B's promise to pay Rs. 1,000. The consideration, being opposed to public policy, is unlawful.

The seven circumstances which would make consideration as well as an object unlawful is discussed below :

- (i) **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. Let us consider an example. A licence to cut grass is given to X by the Forest Department under the Forest Act. One of the terms of licence is that the licensee should not assign his interest under the licence without the permission of the Forest Officer, and a fine is prescribed for a breach of this condition. However, the observance of the conditions of the licence is not obligatory under the Forest Act. If A in breach of the condition, agrees to assign his interest under the licence to B, that agreement will be valid. Here, the assignment is not prohibited by law, the condition against assignment has been imposed only for administrative purpose or solely for the protection of revenue.
- (ii) **Defeat of the provision of law** : The term 'law' includes any legislative enactment or rule of the Hindu and Muslim Laws or any other rule for the time being in force in India. Legislative enactment would be defeated by an agreement by a debtor not to plead limitation, as the object is to defeat the provisions of the Limitation Act. The Hindu Law is defeated by an agreement to give as son in adoption in consideration of annual allowance to the natural parents.
- (iii) **Defeat of any rule for the time being in force in India** : Example - A Receiver being an officer of the Court, the Court has also the jurisdiction to determine his remuneration, and

the parties cannot by any of theirs add to or derogate from the functions of the Court without its authority. A promise, therefore, to pay the salary of a receiver without the leave of the Court, even if unconditional, being in contravention of law, is not binding on the promisor. The object of consideration in all the agreements aforementioned being unlawful, these are void.

- (iv) **Fraudulent** : The following are examples of agreement the object or consideration whereof is unlawful on the ground of fraud (1) A, an agent for a zamindar agrees for money without the knowledge of his principal, to obtain for B a lease of land belonging to his principal. The agreement between A and B is void, as the consideration is fraudulent. (2) An agreement between A and B to defraud a department of Government by submitting a tender in the name of one of them only, though they were both partners in the transaction is void, as the object is fraudulent.
- (v) **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.
- (1) 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.
 - (2) A promises to repay his debt by doing manual labour daily for a special period and agrees to pay interest at an exorbitant rate in case of default. Here A’s promise to repay by manual labour is the consideration for the loan, and this consideration is illegal as it imposes what, in substance, amounts to slavery on the part of A. In other words, as the consideration involves injury to the person of A, the consideration is illegal. Here the object too is illegal, as it seeks to impose slavery which is opposed to public policy. Hence the agreement is void.
- (vi) **Immoral** : The following are the illustrations of agreements where the object or consideration is unlawful, being immoral.
- (1) 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.
 - (2) Where P had advanced money to D, a married woman to enable her to obtain a divorce from her husband and D had agreed to marry him as soon as she could obtain the divorce, it was held that P was not entitled to recover the amount, since the agreement had for its object the divorce of D from her husband and the promise of marriage given under these circumstances was against good morals.
- (vii) **Agreement 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. Agreements tending to create interest against duty, agreements tending to create monopolies and agreements not to bid at an auction are also opposed to public policy. An attempt to enlarge the scope of the doctrine is bound to result in the curtailment of an individual freedom to contract. Public policy, on this account, has been described as an unruly horse which, if not properly bridled, may carry its rider, he knows not where. It being an untrustworthy guide for regulating the relations between parties. It should not be invoked except within the prescribed limits described below.

- (a) *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.
- (b) *Stifling prosecution* : An agreement to stifle prosecution 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. Under the Indian Criminal Procedure Code, there is, however, a statutory list of compoundable offences and an agreement to drop proceeding relating to such offences with or without the permission of the Court, as the case may be, in consideration the accused promising to do something for the complainant, is not opposed to public policy. Thus, where A agrees to sell certain land to B in consideration of B abstaining from taking criminal proceeding against A with respect to an offence which is compoundable, the agreement is not opposed to public policy. However, it is otherwise, if the offence is uncompoundable.
- (c) *Champerty and maintenance* : Maintenance is the promotion of litigation in which one had no interest and champerty is bargain whereby one party agrees to assist the other in recovering property, with a view to sharing the profits of litigation. Agreements tending to champerty and maintenance are void in England but in India they are not necessarily void. Thus, in India, an agreement to share the subject of litigation, if recovered in consideration of the party's supplying the funds in good faith to carry it on, is not itself, opposed to public policy. But where such advances are made by way of gambling in litigation, the agreement to share the subject of litigation is certainly opposed to public policy and therefore void.
- (d) *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, an agreement to induce any executive officer of the State to act partially or corruptly is void.
- (e) *Marriage brokerage contracts* : 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.

- (f) *Interest against obligation* : 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.
- (1) An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.
 - (2) A, who is the manager of a firm, agrees to pass a contract to X if X pays to A Rs. 2,000 privately; the agreement is void.
- (g) *Sale of 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. The following are the examples of agreements that are void; since they are tantamount to sale of public offices.
- (1) 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.
 - (2) An agreement to procure a public recognition like Padma Vibhushan for reward is void.
- (h) *Agreement for the creation of monopolies* : Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.
- (i) *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.
- (j) *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 following exceptions, namely, where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid (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. Under Section 36 of the Indian Partnership Act, 1932 if an outgoing partner makes an agreement with the continuing partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such an agreement, though in restraint of trade, will be valid, if the restrictions imposed are reasonable. Similarly, under Section 11 of the Indian Partnership Act, 1932 an agreement between partners not to carry on competing business during the continuance of partnership is valid.

But an agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade. For 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.

Similarly, an agreement by a manufacturer to sell during a certain period his entire production to a wholesale merchant is not in restraint of trade. Likewise an 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.

- (k) *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. Such an agreement also is void because its object is to defeat the provision of the Indian Limitation Act.

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.

1.20 AGREEMENTS EXPRESSLY DECLARED VOID

Certain agreements have been expressly declared void by the Contract Act. These are void ab initio and do not give rise to any legal consequences. We have already discussed some of these contracts such as agreements by incompetent parties (Section 11); agreements with an unlawful object or consideration (Section 23); agreement made under a mutual mistake of fact (Section 20); agreements without consideration (Section 25); Agreements in restraint of marriage, trade, or legal proceedings etc. We shall now discuss some other cases of agreements expressly declared to be void.

- (a) **Consideration Unlawful in Part** : By virtue of Section 24, "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."

This section is an obvious consequence of the general principle of Section 23. There is no promise for a lawful consideration if there is anything illegal in a consideration which must be taken as a whole. 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.

Illustration : A promises to superintend, on behalf of Y, a legal manufacturer of indigo and an illegal traffic in other articles. B promises to pay A a salary of 2,000 rupees per month. The agreement is void, the object of A's promise and the consideration for B's promise being in part unlawful.

- (b) **Agreement - the meaning of which is uncertain (Section 29)** : 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. For 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.
- (c) **Wagering agreement:** 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. For example, A agrees to pay Rs. 500 to B if it rains, and B promises to pay a like amount to A if it does not rain, the agreement will be by way of wager. But if one of the parties has control over the event, agreement is not a wager.

Now, what is your view about a lottery authorised by the government? Is your agreement to buy a Haryana State Lottery ticket valid? It has been held that such an agreement is one by way of wager and hence void under Section 30.

Speculative transactions : Though wagering transactions are void, speculative transactions are generally valid. It is, however, sometimes difficult to distinguish between a speculative transaction and a wagering transaction. A speculative transaction essentially, must have two elements, namely, (1) mutual intention of the contracting parties to acquire or deliver, as the case may be, the commodities; and (2) the undertaking or risk arising from movement in prices. A wager, on the other hand, postulates only the incurring of risk. The essential character of a speculative transaction is stated below.

A buys from B 100 bales of jute at Rs. 150 per bale for forward delivery after six months. At the time to delivery, the price of jute is Rs. 200. In these circumstances, at the end of six months A can either demand delivery of 100 bales or collect the difference in price at Rs. 50 bale. On the other hand, if the price has gone down to say, Rs. 125 per bale, A will be able to settle the transaction by paying B at Rs. 25 per bale. In the case, it will be observed, that the original intention of the parties was to purchase and sell the bales of jute. Merely because subsequently they transact by payment or receipt of the difference in price, the original character of the transaction is not thereby altered. If, however, the mutual intention was only to settle the transaction by payment or receipt of the difference in price, the transaction would be wagering contract which would be void.

Thus, gambling is prohibited by law, whereas speculation is generally not. Under Section 30 of the Act, a wagering contract is void, the reason being that such a contract is opposed to public policy.

Wager and collateral transactions : Though a wagering contract is void, transactions incidental to wagering transactions are not void. Thus, a broker in a wagering transaction can recover his brokerage. Similarly a principal can recover from his agent the prize money received by him on account of a wagering transaction.



When a transaction is simply void but not illegal, the collateral transaction would be valid. For example, a contract by way of wager is void by statute and no action can be brought to recover any money alleged to have been won upon a wager but it is not illegal. Therefore, a promise made by the loser of a wager to pay the amount lost in consideration of the winner's forbearance to post him as defaulter, can be enforced as a fresh contract since it is separate and distinct from the original wagering contract, though collateral to it. But the position is different in respect of transactions collateral to illegal contracts. They are so invalid, e.g., security given for the regular payment of the rent of a house let out for purposes for gambling cannot be recovered; the recovery of security being tainted with illegality of the original transaction, cannot be enforced.

1.21 SUMMARY

The following persons are incompetent to contract: (a) minor, (b) Persons of unsound mind, (c) other disqualified persons.

- (a) **Minor** : Agreement with a minor is altogether void but his property is liable for necessaries supplied to him. He cannot be a partner but can be admitted to benefits of partnership with the consent of all partners. He can always plead minority and cannot be asked to compensate for any benefit received under a void agreement. Under certain circumstances, a guardian can enter into valid contract on behalf of minor. Minor cannot ratify a contract on attaining majority.
- (b) **Persons of unsound mind** : Persons of unsound mind such as idiots, lunatics and drunkards cannot enter into a contract, but a lunatic can enter into a valid contract when he is in a sound state of mind. The liability for necessities of life supplied to persons of unsound mind is the same as in case of minors. (Section 68)
- (c) Certain other persons are disqualified due to their status.

FREE CONSENT

Two or more persons are said to consent when they agree upon the same thing in the same sense (Section 13). Consent is free when it is not caused by mistake, misrepresentation, undue influence, fraud or coercion. When consent is caused by any of above said elements, the contract is voidable at the option of the party whose consent was so caused (Sections 19 and 19A).

- (a) **Coercion** : 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 with the intention of causing any person to enter into an agreement (Section 15). A contract induced by coercion is voidable at the option of the aggrieved party.
- (b) **Undue influence** : When one party to a contract is able to dominate the will of the other and uses the position to obtain an unfair advantage, the contract is said to be induced by undue influence. (Section 16). Such contract is voidable, not void.
- (c) **Fraud** : Fraud exists when a false representation has been made knowingly with an intention to deceive the other party, or to induce him to enter a contract (Section 17). Contract in the case is voidable.

- (d) **Misrepresentation** : Means a misstatement of a material fact made believing it to be true, without an intent to deceive the other party (Section 18). Contract will be voidable in this case.
- (e) **Mistake** : When both the parties are at a mistake to a matter of fact to the agreement, the agreement is altogether void.

LAWFUL OBJECT AND CONSIDERATION

An agreement where the object or the consideration is unlawful, is void. Object or consideration is unlawful if it is forbidden by law, it would defeat the provisions of law; or is fraudulent, or involves injury to the person or property of another; or is immoral; or is opposed to public policy.

Besides the above said agreements, certain agreements have been expressly declared to be void by the Contract Act such as - wagering agreements, agreement with uncertain meaning, agreements where consideration is unlawful in part etc.



CHAPTER – 1

THE INDIAN CONTRACT ACT, 1872



Unit 4

Performance of Contract

Learning objectives

- ◆ Understand how obligations under a contract must be carried out by the parties.
- ◆ Be familiar with the various modes of performance.
- ◆ Be clear about the consequence of refusal of performance or refusal to accept performance, by either of the parties.
- ◆ Rights of joint promisees, liabilities of joint promisors, and rules regarding appropriation of payments must be clearly understood.

PERFORMANCE OF CONTRACTS

A contract being an agreement enforceable by law, creates a legal obligation, which subsists until discharge. Performance of the promise or promises remaining to be performed is the principal and most usual mode of discharge. This unit explains: who must perform his obligation, what should be the mode of performance, and what shall be the consequences of non-performance.

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. Promises bind the representatives of the promisor in case of death of such promisor before performance, unless a contrary intention appears from the contract (Section 37).

Thus, you should note 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.

1.22 BY WHOM CONTRACT MAY BE PERFORMED ?

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.
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. *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. (Section 37, para 2). But their liability under a contract is limited to the value of the property they inherit from the deceased.



4. *Third persons* : 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, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.

Example : A received certain goods from B promising to pay Rs. 10,000/-. Later on, A expressed his inability to make payment. C, who is known to A, pays Rs. 6,000/- 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. 10,000/- whether he can do so? Advice.

As per Section 41 of the Indian Contract Act, 1872, 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, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party. Therefore, in the present instance, B can sue only for the balance amount i.e., Rs. 4,000/- and not for the whole amount.

5. *Joint promisors* : When two or more persons have made a joint promise, then unless a contrary intention appears from the contract, all such persons must jointly fulfil the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise. If all of them die, the legal representatives of all of them must fulfil the promise jointly. (Section 42).

Examples :

1. A promises to B to pay Rs. 1,000 on delivery of certain goods. A may perform this promise either himself or causing someone else to pay the money to B. If A dies before the time appointed for payment, his representative must pay the money or employ some other person to pay the money. If B dies before the time appointed for the delivery of goods, B's representative shall be bound to deliver the goods to A and A is bound to pay Rs. 1,000 to B's representative.
2. A promises to paint a picture for B for a certain price.
A is bound to perform the promise himself. He cannot appoint 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.
3. A delivered certain goods to B for a promise of Rs. 5,000. Later on B expresses his inability to clear the dues. C, who is known to B, pays Rs. 2,000 to A on behalf of B. Before making this payment C did not tell B about it. Now A can sue B only for the balance and not the whole amount.

1.23 DISTINCTION BETWEEN SUCCESSION AND ASSIGNMENT

You should now note carefully the distinction between two legal concepts, viz., succession and assignment. When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir. Suppose, a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life-time. But if the debts owed by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess. In other words, the liability of the son will be limited to the extent of the property inherited by him; thus far and no further. In the matter of assignment, however the benefit of a contract can only be assigned but not the liabilities thereunder. Why this is so? This is because when liability is assigned, a third party gets involved therein. Thus a debtor cannot relieve himself of his liability to creditor by assigning to someone else his obligation to repay the debt.

On the other hand, if a creditor assigns the benefit of a promise, he thereby entitles the assignee to realise the debt from the debtor but where the benefit is coupled with a liability or when a personal consideration has entered into the making of the contract then the benefit cannot be assigned.

1.24 EFFECT OF REFUSAL TO ACCEPT OFFER OF PERFORMANCE

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 fulfil certain conditions which are as follows, namely :

- (i) it must be unconditional;
- (ii) it must be made at a proper time and place under such circumstances that the persons 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.

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

1.25 EFFECT OF A REFUSAL OF PARTY TO PERFORM PROMISE

Primarily, it gives rise to certain rights to the other party. Let us now consider what those rights are.

When a party to a contract has refused to perform or has disabled himself from performing his promise in entirety, the promisor may put an end to the contract, unless he has signified by words or conduct, his acquiescence in its continuance (Section 39). From language of Section 39 it is clear that in the case under consideration, 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 immediately. In either case, the promisee would be able to claim damages that he suffers as a result on the breach.

1.26 LIABILITY OF JOINT PROMISORS

If two or more persons have made a joint promise, ordinarily all of them during their life-time must jointly fulfill the promise. After death of any one of them, his legal representative jointly with the survivor or survivors should do so (Sec. 42). After the death of the last survivor the legal representatives of all the original co-promisors must fulfil the promise. For 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. This rule is applicable only if the contract reveals no contrary intention.

We have seen that Section 42 deals with *voluntary* discharge of obligations by joint promisors. But if they do not discharge their obligation on their own *volition*, what will happen? This is what Section 43 resolves. Accordingly,

- (i) 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.
- (ii) If one of the joint promisors is made to perform the whole contract, he can call for a contribution from others. For example, A, B and C jointly execute a promissory note for Rs. 3,000 in favour of D. A is compelled to pay the whole amount. A, in such a case would be able to realise Rs. 1,000 each from B and C. This rule may, however, be modified by mutual agreement between the joint promisors.
- (iii) If any of the joint promisors makes a default in making his contribution the remaining joint promisors must bear the loss arising from such a default in equal shares. In the above example, where A, B and C jointly executed the promissory note for Rs. 3,000 and if C was unable to pay anything, then A would be able to realise from B by way of contribution Rs. 1,500 instead of Rs. 1,000.

We thus observe that the effect of Section 43 is to make the liability in the event of a joint contract, both joint and 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.

The effect of release of one of the joint promisors is dealt with in Section 44 which is stated below :

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.

1.27 RIGHTS OF JOINT PROMISEES

The law is contained in Section 45 which is reproduced below :

“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 representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly”.

For example, A, in consideration of Rs. 5,000 lent to him by B and C, promises B and C jointly repay the 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.

1.28 TIME AND PLACE FOR PERFORMANCE OF THE PROMISE

The law on the subject is contained in Section 46 to 50 provisions whereof are summarised below :

- (i) If no time is specified in a contract for the performance of the promise, the promise must be performed within a reasonable time. The expression reasonable time is to be interpreted having regard to the facts and circumstances of a particular case.
- (ii) If a promise is to be performed on a specified date but the hour is not mentioned, the promisor may perform it at any time during the usual hours of business, on such day. For example, if the delivery of goods is offered say after sunset, the promisee may refuse to accept delivery, for the usual business hours are, between 10 a.m. and 5 p.m. Moreover, the delivery must be made at the usual place of business.
- (iii) When no place is fixed for the performance of a promise, it is the duty of the promisor to ask the promisee to fix a reasonable place for the performance of the promise.

The foregoing rules regarding the time and place for the performance of promise apply, only when the promisor undertakes to perform the promise without an application being made by the promisee.

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

1.29 PERFORMANCE OF RECIPROCAL PROMISES

The law on the subject is contained in Sections 51 to 54. The provisions thereof are summarised below :

- (i) *General observations* : A contract may consist of an act and a promise, or it may consist of two promises, one being the consideration for the other. Thus, when A sells 500 quintals of rice to B who promises to pay the price after a month, the contract would consist of an act performed by A and a promise made by B. On the other hand, if A promises to deliver 500



quintals of rice and B promises to pay the price on delivery, the contract would consist of two promises, one made by A to B and the other given by B to A. Such promises are called reciprocal promises. Here, the promise of A is the consideration for the promise of B and vice versa.

- (ii) *Simultaneous performance of reciprocal promises* : Reciprocal promises may have to be performed simultaneously, or one after the other. Where A promises to deliver rice and B promises to pay the price on delivery, both the promises are to be performed simultaneously, and both A and B must be ready and willing to perform their respective promises. Such promises constitute concurrent conditions and the performance of one of the promises is conditional on the performance of the other. If one of the promises is not performed the other too need not be performed. If A, in the above-mentioned illustration, is unwilling to deliver the rice on payment, A will be guilty of breach of promise and the breach would relieve B of the obligation to perform his promise and would enable B to treat the contract as at an end.
- (iii) *Performance of reciprocal promises where the order of performance is expressly fixed* : When the order of performance of the reciprocal promises is expressly fixed by the contract, they must be performed in that order. For instance, 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 can be called upon to perform his promise to pay for it. The promise being dependent on each other, any breach thereof by A would relieve B of the obligation to keep up his own promises, and would enable B to avoid the contract.
- (iv) *Performance of reciprocal promises when the order of performance is fixed by implication* : The order of performance may sometimes be indicated not expressly, but by the nature of the transaction. For example, A and B contract that A shall make over his stock-in-trade to B at a fixed price, and B promises to give security for the payment of the price. A's promise to make over his stock need not be performed, until the security is given by B, for the nature of the transaction required that A should have the security from B before he delivers his stock.
- (v) *Effect of one party preventing another from performing promise* : When in a contract, consisting of reciprocal promises, one party prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented. The latter becomes entitled to get compensation from the other party for any loss he sustains in consequence of the non-performance of the contract. For instance, in a contract for the sale of standing timber, the seller is to cut and cord it, whereupon buyer is to take it away and pay for it. The seller cords only a part of the timber and neglects to cord the rest. In that event the buyer may avoid the contract and claim compensation from the seller for any loss which he may have sustained for the non-performance of the contract.

Reciprocal promise to do certain things that are legal, and also some other things that are illegal : When 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 contract, but the second is a void agreement.

For example, A and B agree that A will sell a house to B for Rs. 50,000 and also that if B uses it as a gambling house, he will pay a further sum of Rs. 75,000. The first set of reciprocal promises, i.e. to sell the house and to pay Rs. 50,000 for it, constitutes a valid contract. But the object of the second, being unlawful, is void.

'Alternative promise' one branch being illegal : The law on this point is contained in Section 58 which is reproduced below.

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

1.30 EFFECT OF FAILURE TO PERFORM AT A TIME FIXED IN A CONTRACT IN WHICH TIME IS ESSENTIAL

The law on the subject is contained in Section 55 which is reproduced below :

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.

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.

But ordinarily, from an examination of a contract, it is difficult to ascertain whether time is intended to be of essence by the parties at the time of its formation. In every case, the intention is to be gathered from the terms of the contract.

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, e.g. 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. Similarly, in a contract to sell land any clause limiting the time of completion is not strictly enforced. But even in a contract for the sale of land, time can be made the essence of the contract by express words.

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: 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.

1.31 IMPOSSIBILITY OF PERFORMANCE

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. 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.”

- (1) **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.
 - (i) **If known to the parties** : It would be observed that an agreement constituted, quite known to the parties, may be impossible of being performed and hence void. For example, B promises to pay a sum of Rs. 5,000 if he is able to swim across the Indian Ocean from Bombay 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.
 - (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.
- (2) **Supervening impossibility**: 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.

1.32 APPROPRIATION OF PAYMENTS

- (i) *Application of Payment where debt to be discharged is indicated*: The law on the subject is contained in Section 59 reproduced below :

“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”.

The Latin maxim is *quicquid soivitur, soivitur secundum modum solventis*. The meaning of the maxim is that whatever is paid, is paid according to the intention or manner of the party paying. According to this maxim, where a debtor owes several distinct debts to a creditor and makes payment it has been held in Clayton’s case that the former enjoys the

right of appropriation, and he may, at his pleasure, appropriate it to any debt; the creditor will be bound by such an appropriation. If the debtor has not intimated at the time of payment creditor is entitled to appropriate it to the debt first in time.

- (ii) *Application of payment where neither party appropriates* : The law on the subject is contained in Section 61, reproduced below :

“Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing the payment shall be applied in discharge of each proportionately.”

The aforesaid rule is to be applied when there is nothing to show the intention of the parties. If the debts are of the same date the payment shall be applied in discharge of each proportionately. For example, there are two debts one of Rs. 500 and the other of Rs. 700 that were incurred on the same date the debtor pays Rs. 600. Out of this sum, a sum of Rs. 250 should be applied in discharge of the first debt and the balance of Rs. 350 in discharge of the second debt.

1.33 CONTRACTS WHICH NEED NOT BE PERFORMED

Under this heading, we shall discuss the principles of Novation, Rescission and Alteration and Remission. The law is contained in Section 62 to 67 of the Contract Act. Section 62 is reproduced below :

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

- (a) **Effect of novation** : The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation. 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. Novation can take place only by mutual agreement between the parties. For example, A owes B Rs. 100. A, B and C agree that C will pay B and he will accept Rs. 100 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.
- (b) **Effect of rescission** : A contract is also discharged by 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.
- (c) **Effect of alteration of contract** : As in the case of novation and rescission so also in a case 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. In other words, the distinction between novation and alteration is very slender.



Novation and alteration : The law pertaining to novation and alteration is contained in Section 62 to 67 of the Indian Contract Act. In both these cases the original contract need not be performed. Still there is a difference between these two.

1. Novation means substitution of an existing contract with a new one. Novation may be made by changing in the terms of the contract or there may be a change in the contracting parties. But in case of alteration the terms of the contract may be altered by mutual agreement by the contracting parties but the parties to the contract will remain the same.
2. In case of novation there is altogether a substitution of new contract in place of the old contract. But in case of alteration it is not essential to substitute a new contract in place of the old contract. In alteration may be a change in some of the terms and conditions of the original agreement.

(d) Promisee may waive or remit performance of promise : The law on the subject is contained in Section 63 reproduced below :

“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 its any satisfaction which he thinks fit”. In other words, a contract may be discharged by remission. Thus where A, a party to a contract, has done all that he was required to do under the contract and the time for the other party, X, to perform his promise has not yet arrived, a bare waiver of his claim by A would be an effectual discharge to X.

It should be noted that novation, rescission or alteration cannot take place without consideration. But in the case of partial or complete remission, no consideration is required. The promisee can dispense with performance without consideration and without a new agreement.

The promisee under the Act can also extend the time for the performance of the promise. Time can be extended only for the benefit of the promisor and not for the benefit of the promisee.

Similarly, a promisee can accept instead of the stipulated performance, any satisfaction which he thinks fit. For instance, A sells his horse to B who promises to pay Rs. 500 for the horse. A may accept, instead of Rs. 500 a necklace as the price of the horse.

1.34 RESTORATION OF BENEFIT UNDER A VOIDABLE CONTRACT (SECTION 64)

The law on the subject is reproduced below :

“When a person at whose option a contract is voidable rescinds it, the other party thereto need not perform any promise therein contained in which he is the promisor. The party rescinding a voidable contract shall, if he has received any benefit thereunder from another party to such contract, restore such benefit, so far as may be, to the person from whom it was received”.

Such a contract can be terminated at the option of the party who is empowered to do so. If he has received any benefit under the contract, he must restore such benefit to the person from

whom he has received it. For example, an insurance company may rescind a policy on the ground that material fact has not been disclosed. When it does so, the premium collected by it in respect of the policy reduced by the amount of expenses incurred by it in this connection must be repaid to the policy holder.

A voidable contract, when it is voidable at its inception as well as when it subsequently becomes voidable, comes to an end as soon as it is avoided by the party at whose option it is voidable. On the contract being avoided, the injured party is entitled to recover compensation for any damage which he has sustained through the non-performance of the contract. On the other hand, if he has received any benefit under voidable contract, he must restore such benefit to the person from whom it was received.

1.35 OBLIGATIONS OF PERSON WHO HAS RECEIVED ADVANTAGE UNDER VOID AGREEMENT OR ONE BECOMING VOID

The law on the subject is contained in Section 65 which is stated below :

When an agreement is discovered to be void or when a contract becomes void, any person who received any advantage under such agreement or contract must restore it, makes compensation for it to the person from whom he received it. From the language of the Section, it is clear that in such a case either the advantage received must be restored back or a compensation, sufficient to put the position prior to contract, should be paid.

In a case, the plaintiff hired a godown from the defendant for twelve months and paid the whole of the rent in advance. After about seven months the godown was destroyed by fire, without any fault or negligence on the part of the plaintiff and the plaintiff claimed a refund of a proportionate amount of the rent. Held, the plaintiff was entitled to recover the rent for the unexpired term, of the contract.

The Act requires that a party must give back whatever he has received under the contract. The benefit to be restored under this section must be benefit received under the contract. A agrees to sell land to B for Rs. 40,000. B pays to A Rs. 4,000 as a deposit at the time of the contract, the amount to be forfeited to A if B does not complete the sale within a specified period. B fails to complete the sale within the specified period, nor is he ready and willing to complete the sale within a reasonable time after the expiry of that period. A is entitled to rescind the contract and to retain the deposit. The deposit is not a benefit received under the contract, it is a security that the purchaser would fulfill his contract and is ancillary to the contract for the sale of the land.

Though generally the benefit received under an agreement which is subsequently found to be void, must be returned, such a course may not be necessary when the benefit has been received by the corporation. It is because contract with a corporation usually is required to be entered into a special form, in the absence of which the contract becomes void. The argument in support of this view is that the agreement in this case becomes void due to the negligence of the promisor.

Communication of rescission (Section 66) : You have noticed that a contract voidable at the option of one of the parties can be rescinded; but rescission must be communicated to the other party in the same manner as a proposal is communicated under Section 4 of the Contract Act. Similarly, a rescission may be revoked in the same manner as a proposal is revoked.



Effects of neglect of promisee (Section 67) : If any promisee neglects or refuses to afford the promisor facilities for the performance of a promise, the promisor is excused from the performance of his promise. In other words, the promisor cannot be held liable for the non-performance. For example, if an apprentice refuses to learn, the teacher cannot be held liable for not teaching.

A contracts with B to repair B's house. B neglects or refuses to point out to A the places in which his house requires repair. A is excused for the non-performance of the contract it is caused by such neglect or refusal.

1.36 DISCHARGE OF A CONTRACT

A contract may be discharged either by an Act of the parties or by an operation of law in the different base set out below :

- (i) *Discharge by performance* : 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 (1) actual performance or (2) 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.
- (ii) *Discharge by mutual agreement* : Section 62 of the Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to refund or remit or alter it, the original contract need not be performed. The principles of Novation, Rescission, Alteration and Remission are already discussed in para 4.12.
- (iii) *Discharge by impossibility of performance* : The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to : (a) an unforeseen change in law, (b) the destruction of the subject-matter essential to that performance; (c) the non-existence or non-occurrence of particular state of things, which was naturally contemplated for performing the contract, as a result of some personal incapacity like dangerous malady; (e) the declaration of a war (Section 56).
- (iv) *Discharge by lapse of time* : A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promising within the specified period of limitation, he is deprived of remedy at law. For example, if a creditor does not file a suit against the buyer for recovery of the price within three years, the debt becomes time-barred and hence irrecoverable.
- (v) *Discharge by operation of law* : A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.
- (vi) *Discharge by breach of contract* : Breach of contract may be actual breach of contract or anticipatory breach of contract. If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof. When on the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach. If one of the parties to a contract breaks

the promisee the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract (Section 64)

- (vii) A promisee may dispense with or remit the performance of the promise made to him or may accept any satisfaction he thinks fit. In the first case, the contract will be discharged by remission and in the second by accord and satisfaction (Section 63).
- (viii) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

1.37 SUMMARY

1. The promisor or his representative must perform unless the nature of contract shows that it may be performed by a third person, but the promisee may accept performance by a third party. (Sections 37, 40 and 41).
2. In case of joint promisors, all must perform, and after the death of any of them, the survivors and the representatives of the deceased must perform. But their liability is joint and several. If the promisee requires any one of them perform the whole promise, he can claim contribution from others. (Sections 42, 43 and 44).
3. Joint promisees have only a joint right to claim performance (Section 45).
4. The promisor must offer to perform and such offer must be unconditional, and be made at the proper time and place, allowing the promisee a reasonable opportunity of inspection of the things to be delivered (Sections 38, 46, 47, 48, 49 and 50).
5. If the performance consists of payment of money and there are several debts to be paid, the payment shall be appropriated as per provisions of Sections 59, 60 and 61.
6. If an offer of performance is not accepted, the promisor is not responsible for non-performance and does not lose his rights under the contract; so also if the promisee fails to afford reasonable facilities. He may sue for specific performance or he may avoid the contract and claim compensation (Sections 38, 39, 53 and 67).
7. Rescission is communicated and revoked in the same way as a promise. The effect is to dispense with further performance and to render the party rescinding liable to restore any benefit he may have received. (Sections 64 and 66)
8. Parties may agree to cancel the contract or to alter it or to substitute a new contract for it. (Section 62).

We have so far seen how a contract is made, the essential elements that go to make a valid contract and also how a contract is to be performed and how a contract may be put an end to. We shall now discuss about the breach of contract and also the mode in which compensation for breach of contract is estimated.

CHAPTER - 1

THE INDIAN CONTRACT ACT, 1872



Unit 5

Breach
of
Contract

Learning objectives

- ◆ Understand the concept of breach of contract and various modes thereof.
- ◆ Be clear about how the damages are to be measured.
- ◆ Note the circumstances when vindictive damages are awarded.

1.38 ANTICIPATORY BREACH OF CONTRACT

It is an important concept under the law of contractual relationship. 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. A promisee, instead of putting an end to the contract forthwith may keep the contract alive upto the time when the contract is to be executed. But the amount of damages in one case may be different from that in the other. We shall now explain this difference in the amount of damages by means of an illustration. X agrees to sell to Y a certain quantity of say, wheat at Rs. 100/- per quintal to be delivered, say, on the 3rd March. On the 2nd February, X gives notice expressing his unwillingness to sell wheat; and the price of wheat on the date is Rs. 110/- per quintal. If Y repudiates the contract forthwith (which he is entitled to do at his option), he would be able to recover damages @ Rs. 10/- per quintal, being the difference between market price on the 2nd February and the contract price. If instead of taking the action forthwith, he keeps the contract alive till the 3rd March and in the mean time, the price increases to Rs. 125/- per quintal on the date. Y would be able to recover damages @25/- per quintal. If, on the other hand, during the intervening period between 2nd February and 3rd March, private sale of wheat is prohibited by the Government, the contract would become void, and Y would not be able to recover any damages whatever. Thus you observe that if the promisee keeps the contract alive, he does so not only for his own benefit but also for the benefit of the promisor.

1.39 ACTUAL BREACH OF CONTRACT

In contrast to anticipatory breach, 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.

The Act, in Section 73, has laid down the rules as to how the amount of compensation is to be determined. On the breach of the contract, the party who suffers from such a breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him by breach. Compensation can be claimed for any loss or damage which naturally arises in the usual course of events. Compensation can also be claimed for any loss or damage which the party knew when they entered into the contract, as likely to result from the breach. That is to say, special damage can be claimed only on a previous notice. But the party suffering from the breach is bound to take reasonable steps to minimise the loss. And no compensation is payable for any remote or indirect loss.



1.40 LIABILITY FOR DAMAGES

- (a) **Liability for special damages** : Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.
- (b) **Liability to pay vindictive or exemplary damages** : These damages may be awarded only in two cases, viz. (i) for breach of promise to marry; and (ii) wrongful dishonour by a banker of his customer's cheque. In a breach of promise to marry, exemplary damages may be awarded to the other party taking into consideration the injury caused to his or her feelings. The amount of damages recoverable by the drawer of cheque from his banker in case of wrongful dishonour of his cheque may be quite heavy, depending upon the loss of credit and reputation suffered on that account.
- (c) **Liability to pay nominal damages** : Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. Now you may ask why such damages are at all awarded. The answer is simple. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paise.
- (d) **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.

1.41 HOW TO CALCULATE THE DAMAGE ?

Under a contract for the sale of goods, the measure of damages, when the buyer breaks the contract, is the difference between the contract price and the market price at the date of breach. If the contract is broken by the seller, the buyer is entitled to recover from the seller the difference between the market price and the contract price at the date of breach.

Duty to mitigate the loss. You will perhaps recollect that the party who suffers in consequence of the breach of contract must take all reasonable steps to mitigate the loss from such a breach; he cannot claim as damages any loss which he has suffered due to his own negligence.

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

- (i) **Rescission of contract** : When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.
- (ii) **Suit upon Quantum Meruit** : The phrase 'quantum meruit' literally means "as much as is earned" or "according to the quantity of work done". When a person has begun the work and before he could complete it, the other party terminates the contract or does something which make it impossible for the other party to complete the contract, he can claim for the work done under the contract. He may also recover the value of the work done where the further performance of the contract becomes impossible. The claim on quantum meruit

must be brought by a party who is not at default. However, in certain cases, the party in default may also sue for the work done if the contract is divisible. Following are the cases in which a claim on quantum meruit may arise :

- (a) Where the work has been done and accepted under a contract which is subsequently discovered to be void, in such a case, the person who has performed the part of the contract is entitled to recover the amount for the work done and the party, who receives and accepts the benefit under such contract, must make compensation to the other party.
 - (b) Where a person does some act or delivers something to another person with the intention of receiving payments for the same (i.e. non-gratuitous act), in such a case, the other person is bound to make payment if he accepts such services or goods, or enjoys their benefit.
 - (c) The compensation for the work done may be recovered on the basis of quantum meruit. Where the contract is divisible and a party performs part of the contract and refuses to perform the remaining part, in such a case, the party in default may sue the other party who has enjoyed the benefits of the part performance.
- (iii) **Suit for specific performance** : Where damages are not an adequate remedy in the case of breach of contract, the court may in its discretion on a suit for specific performance direct party in breach, to carry out his promise according to the terms of the contract.
- (iv) **Suit for injunction** : Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction order' restrain him from doing what he promised not to do.

1.42 SUMMARY

In case of breach of contract by one party the other party need not perform his part of the contract and is entitled to compensation for the loss occurred to him. Damages for breach of contract must be such loss or damage as naturally arises, in the usual course of things or which had been reasonably supposed to have been in contemplation of the parties when they made the contract, as the probable result of the breach. Any other damages are said to be remote or indirect damages, hence, cannot be claimed.

CHAPTER - 1

THE INDIAN CONTRACT ACT, 1872



Unit 6

Contingent and Quasi-Contracts

Learning objectives

- ◆ Have clarity about the basic characteristics of 'Contingent contract' and 'quasi-contract' so that you are able to distinguish between a contract of any of these types and a simple contract.
- ◆ Be familiar with the rules relating to enforcement of these in order to gain an understanding of rights and obligations of the parties to the contract.

In this unit we shall briefly examine what is called a 'contingent contract', its essentials and the rules regarding enforcement of this type of contracts. Again, the Contract Act recognises certain cases in which an obligation is created without a contract. Such obligations arise out of certain relations which cannot be called as contracts in the strict sense. There is no offer, no acceptance, no *consensus ad idem* and in fact neither agreement nor promise and yet the law imposes an obligation on one party and confers a right in favour of the other. We shall have a look on these cases of 'Quasi-contracts'.

1.43 WHAT IS A CONTINGENT CONTRACT ?

According to Section 31 of the Act, contingent contract is a contract to *do or not to do something*, if some event collateral to such contract, *does or does not happen*.

Contracts of insurance are of this class.

Example : A contracts to pay B Rs. 1,00,000 if B's house is destroyed by fire. This is a contingent contract.

1.44 ESSENTIALS OF A CONTINGENT CONTRACT

- (1) The performance of a contingent contract is made dependent upon the happening or non-happening of some event. A contract may be subject to a condition precedent or subsequent.
- (2) The event on which the performance is made to depend, is an event collateral to the contract, i.e., it does not form part of the reciprocal promises which constitute the contract. Thus the event should neither be a performance promised, nor the consideration for a promise. Thus (i) 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. (ii) Similarly, where A promises to pay B Rs. 1,00,000 if he marries C, it is not a contingent contract.
- (3) The contingent event should not be the mere will of the promisor. *For instance*, if A promises to pay B Rs. 10,000, if he so chose, 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. For example, if A promises to pay B Rs. 10,000 if A left Delhi for Bombay on a particular day, it is a contingent contract, because going to Bombay is an event no doubt within A's will, but is not merely his will.



1.45 RULES RELATING TO ENFORCEMENT

Enforcement of contracts contingent on an event 'happening' : Where a contingent contract is made to do or not to do anything if an uncertain future event happens, it cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void. To illustrate this concept, let us take an example. X entered into a contract with Y to purchase Y's buffalo, if X survives Z. In view of the said principle of law, the contract, in the instant case, could not be enforced by law unless and until Z died during the life-time of X.

Enforcement of contracts contingent on an event 'not-happening' : Where a contingent contract is made to do or not to 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. For example, P agreed to pay Q a sum of money, if a certain ship does not return. The ship was sunk. The contract could be enforced as the ship would never return in the circumstances.

When shall an event on which contract is contingent be deemed impossible, if it is the future conduct of a living person : Suppose, the future event on which a contract is contingent is the way in which a person will act at an unspecified time. In such a case, 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. For instance, A agrees to pay B a sum of money if A marries C; C marries D. The marriage, of A to C is now to be considered impossible, although it is possible that D may die and that C may afterwards marry A.

Agreement contingent on impossible event (Section 36) : A contingent agreement to do or not to do anything, if an impossible event happens, is void. The impossibility of the event may be or may not be known to the parties to the agreement at the time when they entered into it. For example X agrees to pay Y 1,000 rupees if two straight lines should enclose a space. The agreement is void.

1.46 WHAT IS A QUASI-CONTRACT ?

In the case of every contract, the promisor voluntarily undertakes an obligation in favour of the promisee. A similar obligation may be imposed by law upon a person for the benefit of another even in the absence of a contract. Such cases are known as quasi contracts. The obligation created in either of the cases is identical. Quasi contracts are based on principles of equity, justice and good conscience.

The salient features, of *quasi contractual* right, are as follows:

- (a) Firstly, it does not arise from any agreement of the parties concerned, but is imposed by the law; and
- (b) Secondly, it is a right which is available not against the entire world, but against a particular person or persons only.

1.47 TYPES OF QUASI-CONTRACTS

Under the provisions of the Indian Contract Act, the relationship of *quasi* contract is deemed to have come to exist in five different circumstances which we shall presently dilate upon. But you will notice that in none of these cases there comes into existence any contract between the parties in the real sense. Due to peculiar circumstances in which they are placed, the law imposes in each of these cases of contractual liability.

- (a) **Claim for necessaries supplied to persons incapable of contracting (Section 68):** If necessaries are supplied to a person who is incapable of contracting, e.g. minor or a person of unsound mind, the supplier is entitled to claim their price from the property of such a person.

Accordingly, if A supplies to B, a lunatic, necessaries suited to B's status in life, A would be entitled to recover their price from B's property. He would also be able to recover the price for necessaries supplied by him to his (B's) wife or minor child since B is legally bound to support them. However, if B has no property, nothing would be realisable. You should, however, note that in such circumstances, the price only of necessaries and not of articles of luxury, can be recovered. 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.

Similarly, if money has been advanced in like circumstances for the purchase of necessaries, its reimbursement can be claimed.

- (b) **Right to recover money paid for another person :** A person who has paid a sum of money which another is obliged to pay, is entitled to be reimbursed by that other person provided the payment has been made by him to protect his own interest.
- (c) **Obligation of a person enjoying benefits of non-gratuitous act (Section 70):** Such an obligation arises under the provision of Section 70 reproduced below:

"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 make compensation to the former in respect of, or to restore, the thing so done or delivered."

It thus follows that for a suit to succeed, the plaintiff must prove: (i) that he had done the act or had delivered the thing lawfully; (ii) that he did not do so gratuitously; and (iii) that the other person enjoyed the benefit.

- (d) **Responsibility of a finder of goods:** Such a responsibility arises under Section 71 which is reproduced below:

"A person who finds goods belonging to another and takes them into his custody is subject to the same responsibility as a bailee".

He is, therefore, required to take proper care of things found, not to appropriate it to his own use and, when the owner is traced, to restore it to the owner. Further, he must take as much care of the goods found as a man of ordinary prudence would, under similar circumstances, take care of his own goods of the same bulk, quantity and value as those of



the goods found. Let us exemplify this rule by means of an illustration. P, a customer in D's shop, puts down a brooch with her coat and forgets to pick it up. One of D's assistants found it and it was placed in a drawer over the weekend. On Monday, it was discovered as missing. D was liable to P in view of the absence of that ordinary care which in the circumstances, a prudent man would have taken.

(e) **Liability for money paid or thing delivered by mistake or under coercion:** Such liability arises under Section 72 of the Contract Act which is reproduced below:

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

In each of the above cases, contractual liability is the creation of law and does not depend upon any mutual agreement between the parties.

1.48 WAGERING AGREEMENT AND CONTINGENT CONTRACT

The points of distinction between the two may be noted as follows :

1. A wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.
A contingent contract, on the other hand, is a contract to do or not to do something if some event, collateral to such contract does or does not happen.
2. In a wagering agreement the uncertain event is the sole determining factor, while in a contingent contract the event is only collateral.
3. A wagering agreement is essentially of a contingent nature whereas a contingent contract may not be of a wagering nature.
4. A wagering agreement is void whereas a contingent contract is valid.
5. In a wagering agreement, the parties have no other interest in the subject matter of the agreement except the winning or losing of the amount of the wager. In other words, a wagering agreement is a game of chance. This is not so in case of a contingent contract.

1.49 SUMMARY

Contingent Contracts are the contracts, which are conditional on some future event happening or not happening and are enforceable when the future event or loss occurs. (Section 31)

Rules for enforcement

- (a) If it is contingent on the happening of a future event, it is enforceable when the event happens. The contract becomes void if the event becomes impossible, or the event does not happen till the expiry of time fixed for happening of the event.
- (b) If it is contingent on a future event not happening. It can be enforced when happening of that event becomes impossible or it does not happen at the expiry of time fixed for non-happening of the event.

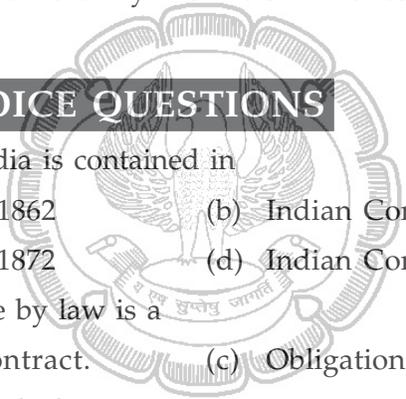
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- (c) If the future event is the act of a living person, any conduct of that person which prevents the event happening within a definite time renders the event impossible.
- (d) If the future event is impossible at the time of the contract is made, the contract is void *ab initio*.

Quasi Contracts arise where obligations are created without a contract. The obligations which they give rise to are expressly enacted:

- (a) If necessaries are supplied to a person who is incapable of contracting, the supplier is entitled to claim their price from the property of such a person.
- (b) A person who is interested in the payment of money which another is bound to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- (c) A person who enjoys the benefit of a non-gratuitous act is bound to make compensation.
- (d) A person who finds lost property may retain it subject to the responsibility of a bailee.
- (e) If money is paid or goods delivered by mistake or under coercion, the recipient must repay or make restoration.

1.50 MULTIPLE CHOICE QUESTIONS

1. The law of contract in India is contained in
 - (a) Indian Contract Act, 1862
 - (b) Indian Contract Act, 1962
 - (c) Indian Contract Act, 1872
 - (d) Indian Contract Act, 1972
2. An agreement enforceable by law is a 
 - (a) Promise.
 - (b) Contract.
 - (c) Obligation.
 - (d) Lawful Promise.
3. A void agreement is one which is
 - (a) Valid but not enforceable
 - (b) Enforceable at the option of both the parties.
 - (c) Enforceable at the option of one party
 - (d) Not enforceable in a court of law.
4. An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a
 - (a) Valid Contract.
 - (b) Void Contract.
 - (c) Voidable Contract.
 - (d) Illegal Contract.
5. Which of the following is false? An offer to be valid must:
 - (a) Intend to create legal relations.
 - (b) Have certain & unambiguous terms.



- (c) Contain a term the non-compliance of which would amount to acceptance.
(d) Be communicated to the person to whom it is made.
6. When the consent of a party is not free, the contract is
(a) Void. (b) Voidable. (c) Valid. (d) Illegal.
7. Which of the following is false? An acceptance:
(a) Must be communicated. (b) Must be absolute and unconditional.
(c) Must be accepted by a person having authority to accept.
(d) May be presumed from silence of offeree.
8. In case of illegal agreements, the collateral agreements are:
(a) Valid. (b) Void. (c) Voidable. (d) None of these.
9. An offer may lapse by:
(a) Revocation. (b) Counter Offer. (c) Rejection of Offer by Offeree.
(d) All of these.
10. A proposal when accepted becomes a
(a) Promise. (b) Contract. (c) Offer. (d) Acceptance.
11. Which of the following statement is true?
(a) Consideration must result in a benefit to both parties.
(b) Past consideration is no consideration in India.
(c) Consideration must be adequate.
(d) Consideration must be something, which a promisor is not already bound to do.
12. Which of the following statement is false? Consideration:
(a) Must move at the desire of the promisor.
(b) May move from any person.
(c) Must be illusory. (d) Must be of some value.
13. Which of the following statement is false?
(a) Generally a stranger to a contract cannot sue.
(b) A verbal promise to pay a time barred debt is valid.
(c) Completed gifts need no consideration.
(d) No consideration is necessary to create an agency.
14. Consideration must move at the desire of
(a) Promisor. (b) Promisee. (c) Any other person. (d) Any of these.

15. Which of the following statement is true?
(a) There can be a stranger to a contract.
(b) There can be a stranger to a consideration.
(c) There can be a stranger to a contract & consideration.
(d) None of the above.
16. Consideration may be
(a) Past (b) Present (c) Future (d) All of the above.
17. Consideration in simple term means:
(a) Anything in return. (b) Something in return.
(c) Everything in return. (d) Nothing in return.
18. Which of the following is not an exception to the rule – No consideration, No contract
(a) Compensation for involuntary services. (b) Love & Affection.
(c) Contract of Agency. (d) Gift.
19. Ordinarily, a minor's agreement is
(a) Void ab initio (b) Voidable. (c) Valid. (d) Unlawful.
20. A minor's liability for 'necessaries' supplied to him;
(a) Arises after he attains majority age.
(b) Is against only minor's property.
(c) Does not arise at all. (d) Arises if minor gives a promise for it.
21. Which of the following statements is not true about minor's position in a firm?
(a) He cannot become a partner in an existing firm.
(b) He can become a partner in an existing firm.
(c) He can be admitted only to the benefits of any existing firm.
(d) He can become partner on becoming a major.
22. Which of the following statement is true?
(a) A contract with a minor is voidable at the option of the minor.
(b) An agreement with a minor can be ratified after he attains majority.
(c) A person who is usually of an unsound mind cannot enter into contract even when he is of a sound mind.
(d) A person who is usually of a sound mind cannot enter into contract when he is of unsound mind.



23. Consent is not said to be free when it is caused by
(a) Coercion. (b) Undue Influence. (c) Fraud. (d) All of these.
24. When the consent of a party is obtained by fraud, the contract is;
(a) Void. (b) Voidable. (c) Valid. (d) Illegal.
25. The threat to commit suicide amounts to
(a) Coercion. (b) Undue Influence.
(c) Misrepresentation. (d) Fraud.
26. Moral pressure is involved in the case of
(a) Coercion. (b) Undue Influence.
(c) Misrepresentation. (d) Fraud.
27. A wrong representation when made without any intention to deceive the other party amounts to
(a) Coercion. (b) Undue Influence.
(c) Misrepresentation. (d) Fraud.
28. Which of the following statement is true?
(a) A threat to commit suicide does not amount to coercion.
(b) Undue influence involves use of physical pressure.
(c) Ignorance of law is no excuse.
(d) Silence always amounts to fraud.
29. In case of illegal agreements, the collateral agreements are:
(a) Valid (b) Void (c) Voidable (d) Any of these.
30. An agreement the object or consideration of which is unlawful, is
(a) Void. (b) Valid. (c) Voidable. (d) Contingent.
31. An agreement is void if it is opposed to public policy. Which of the following is not covered by heads of public policy?
(a) Trading with an enemy. (b) Trafficking in public offices.
(c) Marriage brokerage contracts. (d) Contracts to do impossible acts.
32. On the valid performance of the contractual obligations by the parties, the contract
(a) is discharged. (b) becomes enforceable.
(c) becomes void. (d) none of these.

33. Which of the following persons can perform the contract?
- (a) Promisor alone. (b) Legal representatives of promisor.
(c) Agent of the promisor. (d) All of these.
34. A, B and C jointly promised to pay Rs. 60,000 to D. Before performance of the contract, C dies. Here, the contract
- (a) becomes void on C's death.
(b) should be performed by A and B along with C's legal representatives.
(c) should be performed by A and B alone.
(d) should be renewed between A, B and D.
35. A contract is discharged by novation which means the
- (a) cancellation of the existing contract.
(b) change in one or more terms of the contract.
(c) substitution of existing contract for a new one.
(d) none of these.
36. A contract is discharged by rescission which means the
- (a) change in one or more terms of the contract.
(b) acceptance of lesser performance.
(c) abandonment of rights by a party.
(d) cancellation of the existing contract.
37. When prior to the due date of performance, the promisor absolutely refuses to perform the contract, it is known as
- (a) abandonment of contract. (b) remission of contract.
(c) actual breach of contract. (d) anticipatory breach of contract.
38. In case of anticipatory breach, the aggrieved party may treat the contract
- (a) as discharged and bring an immediate action for damages.
(b) as operative and wait till the time for performance arrives.
(c) exercise option either (a) or (b). (d) only option (a) is available.
39. In case of breach of contract, which of the following remedy is available to the aggrieved party?
- (a) Suit for rescission. (b) Suit for damages.
(c) Suit for specific performance. (d) All of these.



40. Sometimes, a party is entitled to claim compensation in proportion to the work done by him. It is possible by a suit for
- (a) damages (b) injunction
(c) quantum meruit (d) none of these.
41. Generally, the following damages are not recoverable?
- (a) Ordinary damages. (b) Special damages.
(c) Remote damages. (d) Nominal damages.
42. A contract dependent on the happening or non-happening of future uncertain event, is a
- (a) Uncertain contract. (b) Contingent contract.
(c) Void contract. (d) Voidable contract.
43. A contingent contract is
- (a) Void (b) Voidable (c) Valid (d) Illegal
44. A contingent contract dependent on the happening of future uncertain event can be enforced when the event
- (a) happens (b) becomes impossible
(c) does not happen (d) either of these.
45. A agrees to pay Rs. One lakh to B if he brings on earth a star from sky. This is a contingent contract and
- (a) Illegal (b) Valid (c) Voidable (d) Void.
46. Which of the following statements is true
- (a) an agreement enforceable by law is a contract
(b) an agreement is an accepted proposal
(c) both (a) and (b) (d) none of these.
47. A voidable contract is one which
- (a) can be enforced at the option of aggrieved party
(b) can be enforced at the option of both the parties
(c) cannot be enforced in a court of law
(d) courts prohibit.
48. On the acceptance of an offer by a offeree,
- (a) Only the acceptor becomes bound by accepting the offer.
(b) Only the offeror becomes bound as his terms are accepted.

- (c) Both the acceptor and offeree becomes bound by the contract.
(d) None of these.
49. A, by a letter dated 25th December, 1998, offers to sell his house to B for Rs. 10 lakhs. The letter reaches B on 27th December, 1998, who posts his acceptance on 28th December, 1998 which reaches A on 30th December, 1998. Here, the communication of offer is complete on
- (a) 25th December, 1998 (b) 27th December, 1998
(c) 28th December, 1998 (d) 30th December, 1998
50. In the above question, the communication of acceptance is complete against A on 28th December, 1998, and against B on
- (a) 25th December, 1998 (b) 27th December, 1998
(c) 28th December, 1998 (d) 30th December, 1998
51. As a general rule, an agreement made without consideration is
- (a) void (b) voidable (c) valid (d) unlawful
52. A agrees to sell his car worth Rs. 100,000 to B for Rs. 20,000 only, and A's consent was obtained by coercion. Here, the agreement is
- (a) void (b) valid (c) voidable (d) unlawful
53. An agreement made with free consent to which the consideration is lawful but inadequate, is
- (a) void (b) valid (c) voidable (d) unlawful
54. Which of the following persons are not competent to contract?
- (a) minors (b) persons of unsound mind
(c) persons disqualified by law (d) all of these.
55. For the purposes of entering into a contract, a minor is a person who has not completed the age of
- (a) 16 years (b) 18 years (c) 20 years (d) 21 years
56. A contract with the minor, which is beneficial for him, is
- (a) void ab initio (b) voidable (c) valid (d) illegal
57. Which of the following persons do not fall under the category of persons of unsound mind?
- (a) idiot (b) lunatics (c) drunken persons (d) alien.
58. Which of the following elements does not affect the free consent of the parties
- (a) coercion (b) fraud (c) incompetency (d) undue influence



59. When the consent of a party is obtained by coercion undue influence, fraud or misrepresentation, the contract is
(a) void (b) voidable (c) valid (d) illegal
60. A threatens to kill B if he does not agree to sell his scooter to him for Rs. 1000 only. Here B's consent is obtained by
(a) undue influence (b) fraud
(c) coercion (d) none of these
61. When the consent to an agreement is obtained by coercion, the agreement is voidable at the option of
(a) either party to the agreement (b) a party whose consent was so obtained
(c) a party who obtained the consent (d) none of these.
62. Where one party is in a position to dominate the will of another and uses his superior position to obtain the consent of a weaker party, the consent is said to be obtained by
(a) coercion (b) undue influence (c) fraud (d) misrepresentation.
63. Which of the following acts does not fall under the categories of fraud?
(a) Intentional false statement of facts
(b) Active concealment of facts
(c) Innocent false statement
(d) Promise made without intention to perform.
64. Where the consent of a party is obtained by misrepresentation, the contract is
(a) valid (b) void (c) voidable (d) illegal
65. Which of the following statements is false?
(a) A contract is not voidable if fraud or misrepresentation does not induce the other party to enter into a contract.
(b) A party cannot complain of fraudulent silence or misrepresentation if he had the means of discovering the truth with ordinary means.
(c) In case of fraud or misrepresentation, aggrieved party can either rescind or affirm the contract.
(d) A party who affirms the contract, can also change his option afterwards if he so decides.
66. Where the consent of both the parties is given by mistake, the contract is
(a) void (b) valid (c) voidable (d) illegal

67. As per section 20, the contract is void on account of bilateral mistake of fact. But as per Section 22, if there is mistake of only one party, then the contract is
(a) void (b) valid (c) voidable (d) illegal
68. A contract made by mistake about the India Law, is
(a) void (b) valid (c) voidable (d) illegal
69. A contract made by mistake about some foreign law, is
(a) void (b) valid (c) voidable (d) illegal
70. A mistake as to a law not in force in India has the same effect as:
(a) mistake of fact (b) mistake of Indian law
(c) fraud (d) misrepresentation
71. The consideration or object of an agreement is considered unlawful, if it is
(a) forbidden by law (b) fraudulent
(c) immoral (d) all of these.
72. A agrees to pay Rs. 5 lakhs to B if he (B) procures an employment for A in Income Tax Department. This agreement is
(a) void (b) valid (c) voidable (d) contingent.
73. A agrees to pay Rs. 50,000 to B if he kills C. The agreement is
(a) void (b) valid (c) voidable (d) contingent.
74. An agreement in restraint of marriage, i.e., which prevents a person from marrying, is
(a) valid (b) voidable (c) void (d) contingent
75. An agreement in restraint of marriage is valid in case of following persons.
(a) Minors (b) Educated (c) Married (d) None of these.
76. An agreement, which prevents a person from carrying a lawful business, is
(a) Valid (b) Void (c) Voidable (d) Contingent
77. An agreement in restraint of legal proceedings is void. It does not cover an agreement which
(a) Restricts absolutely the parties from enforcing their legal rights
(b) Cuts short the period of limitation
(c) Discharges a party from liability or extinguishes the rights of a party
(d) Provides for a reference to arbitration instead of court of law.
78. A agrees to sell his car to B at a price which B may be able to pay. This agreement is
(a) void (b) valid (c) voidable (d) contingent



79. An agreement to pay money or money's worth on the happening or non-happening of a specified uncertain event, is a
- (a) wagering agreement (b) contingent contract
(c) quasi contract (d) uncertain agreement.
80. An agreement to do an illegal act e.g., to share the earnings of a smuggling business, is
- (a) Valid (b) Void (c) Voidable (d) Contingent
81. Where an agreement consists of two parts once legal and the other illegal, and the legal part is separable from the illegal one, such legal part is
- (a) void (b) valid (c) voidable (d) illegal
82. A contingent contract dependent on the non-happening of a future uncertain event becomes void when such event
- (a) happens (b) does not become impossible
(c) does not happen (d) both (a) and (b)
83. A agrees to pay Rs. 1,000 to B if a certain ship returns within a year. However, the ship sinks within the year. In this case, the contract becomes
- (a) valid (b) void (c) voidable (d) illegal
84. A contingent contract dependent on the non-happening of specified uncertain event within fixed time can be enforced if the event
- (a) does not happen within fixed time
(b) becomes impossible before the expiry of fixed time
(c) happens within the fixed time
(d) both (a) and (b)
85. The basis of 'quasi contractual relations' is the
- (a) existence of a valid contract between the parties
(b) prevention of unjust enrichment at the expense of others
(c) Provisions contained in Section 10 of the Contract Act
(d) Existence of a voidable contract between the parties.
86. Sometimes, a person finds certain goods belonging to some other persons. In such a case, the finder
- (a) becomes the owner of the goods and can use them
(b) is under a duty to trace the true owner and return the goods
(c) can sell the perishable goods if true owner cannot be found
(d) both (b) and (c)

87. A, B and C jointly promised to pay Rs. 60,000 to D. A was compelled by D to pay the entire amount of Rs. 60,000. Here
- (a) A can file a suit against D for recovery of amount exceeding his share.
 - (b) A is entitled to recover Rs. 20,000 each from B and C
 - (c) On payment by A, the contract is discharged and B and C are also not liable to A.
 - (d) D is not justified here, and is liable to refund the entire amount to A.
88. In commercial transactions, time is considered to be of the essence of the contract, and if the party fails to perform the contract within specified time, the contract becomes:
- (a) voidable at the option of the other party
 - (b) void and cannot be enforced
 - (c) illegal for non-compliance of legal terms
 - (d) enforceable in higher court only.
89. Where the performance of a promise by one party depends on the prior performance of promise by the other party, such reciprocal promises fall under the category of
- (a) Mutual and concurrent
 - (b) Conditional and dependent
 - (c) Mutual and independent
 - (d) Both (a) and (b)
90. When after the formation of a valid contract, an event happens which makes the performance of contract impossible, then the contract becomes:
- (a) void
 - (b) voidable
 - (c) valid
 - (d) illegal
91. A party entitled to rescind the contract, loses the remedy where
- (a) he has ratified the contract
 - (b) third party has acquired right in good faith
 - (c) contract is not separable and rescission is sought of a part only
 - (d) all of these.
92. The special damages, i.e., the damages which arise due to some special or unusual circumstances -
- (a) Are not recoverable altogether
 - (b) Are illegal being punitive in nature
 - (c) Cannot be claimed as a matter of right
 - (d) Can be claimed as a matter of right.
93. Which of the following statements is correct?
- (a) Ordinary damages are recoverable.
 - (b) Special damages are recoverable only if the parties knew about them.



- (c) Remote or indirect damages are not recoverable.
(d) All of these.
94. When offer is made to a definite person, it is known as
(a) General Offer (b) Cross Offers
(c) Counter Offer (d) Special Offer
95. Standing Offer means
(a) Offer allowed to remain open for acceptance over a period of time.
(b) Offer made to the public in general.
(c) When the offeree offers to qualified acceptance of the offer.
(d) Offer made to a definite person.
96. When the offeree offers to qualified acceptance of the offer subject to modifications and variations he is said to have made a
(a) Standing, open or Continuing offer. (b) Counter Offer.
(c) Cross Offers (d) Special Offer
97. What is legal terminology for the doing or not doing of something which the promisor desires to be done or not done?
(a) Desires. (b) Wishes. (c) Consideration. (d) Promise.
98. Can a person who is usually of unsound, but occasionally of sound mind, make a contract?
(a) Yes, he can always make a contract. (b) Yes, but only when he is of sound mind.
(c) No, he cannot make a contract. (d) Can't be determined.
99. A and B both believe that a particular kind of rice is being sold in the market at Rs. 3,000 per quintal and A sells rice of that kind to B at Rs.3,000 per quintal. But, in fact, the market price was Rs. 4,000. The contract is
(a) Valid. (b) Void. (c) Voidable. (d) Illegal.
100. A sells the goodwill of his business to B and agrees with him to refrain from carrying on a similar business within specified local limits. This contract is
(a) Valid. (b) Void. (c) Voidable. (d) Illegal.
101. R, an optical surgeon, employs S as the assistant for a term of three years and S agrees not to practice as a surgeon during this period. This contract is
(a) Valid. (b) Void. (c) Voidable. (d) Illegal.
102. Agreement-the meaning of which is uncertain is
(a) Valid. (b) Void. (c) Voidable. (d) Illegal.

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103. A agrees to pay Rs. 500 to B if it rains, and B promises to pay a like amount to A if it does not rain, this agreement is called
- (a) Quasi Contract (b) Contingent Contract.
(c) Wagering Agreement. (d) Voidable Contract.
104. Suppose the time fixed for performance of the contract has expired but the time is not essential. What is the remedy of the promisee in the circumstances?
- (a) Can rescind the contract. (b) To claim compensation.
(c) No remedy available. (d) Can't be determined.
105. A _____ agreement is one, which is enforceable at the option of one party.
- (a) Voidable (b) Void (c) Valid (d) Illegal
106. In case of illegal agreements, the collateral agreements are _____.
- (a) Voidable (b) Void (c) Valid (d) Can't be said.
107. _____ consideration is no consideration in England.
- (a) Past. (b) Present (c) Future (d) Past and Present
108. Consideration must move at the desire of the _____.
- (a) Promisor. (b) Promisee. (c) Any person
(d) Promisee or promissory or any other person
109. There can be a stranger to a _____.
- (a) Contract (b) Consideration (c) Agreement (d) Promise
110. A minor is liable for the _____ supplied to him.
- (a) Necessaries. (b) Luxuries (c) Necessities (d) All the things.
111. When the consent of a party is obtained by fraud, the contract is _____.
- (a) Valid (b) Void (c) Illegal (d) Voidable
112. An agreement the object or consideration of which is unlawful, is _____.
- (a) Valid (b) Void (c) Voidable (d) Can't be said.
113. Implied contract, even if not in writing or express words, is perfectly _____ if other conditions are satisfied.
- (a) Void (b) Valid (c) Voidable (d) Illegal.
114. Threat to commit suicide amounts to
1. Coercion
 2. Offence under the Indian Penal Code
 3. Undue Influence
 4. Fraud
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4



115. Which of the following are covered under the heads Agreements Opposed to Public Policy?
- (1) Trading with enemy
 - (2) Trafficking in Public Offices
 - (3) Marriage Brokerage Contracts
 - (4) Contracts to do impossible acts
- a. 1, 2, 3 b. 2, 3, 4 c. 1, 2, 4 d. 1, 2, 3, 4.
116. The consideration of an agreement is considered unlawful, if it is
- (1) forbidden by law
 - (2) fraudulent
 - (3) immoral
 - (4) Very expensive.
- a. 1, 2, 3 b. 2, 3, 4 c. 1, 2, 4 d. 1, 2, 3, 4.
117. Contract caused by which of the following is voidable:
- (1) Fraud
 - (2) Mis-representation
 - (3) Coercion
 - (4) Bilateral Mistake.
- a. 1, 2, 3 b. 2, 3, 4 c. 1, 2, 4 d. 1, 2, 3, 4.
118. Who among the following is not disqualified by law to enter in to contract?
1. A major person.
 2. A lunatic.
 3. Insolvent person.
 4. Diplomatic staff of foreign states.
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
119. Which of the following is true with respect to minor entering a contract?
1. An agreement with or by a minor is void *ab initio*.
 2. A minor can be a beneficiary of a contract.
 3. The contracts involving a minor as a beneficiary may be enforced at the option of the third party.
 4. A minor can ratify a contract on attaining majority.
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.

120. Which of the following is/are not competent to enter into a contract?
1. A person of the age of majority.
 2. A minor.
 3. A person who is not capable of understanding the contract at the time of its making.
 4. A lunatic during lucid intervals (period of soundness).
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
121. Which of the following statements is true?
1. Even if a proposal is not accepted properly it becomes a valid contract.
 2. The agreements which are against the public policy can be enforced if the parties are willing to contract.
 3. For breach of contract a party can claim compensation for loss or damage.
 4. Two or more persons are said to consent when they agree upon the same thing in the same sense.
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
122. Which of the following is/are false?
1. Consideration must be real.
 2. Consideration can be inadequate.
 3. A promise to do something which one is already bound to do by law, will be treated as good consideration.
 4. Consideration must be adequate.
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
123. Which of the following is/are the essential elements of a valid offer?
1. Offeror must have an intention to be bound by his offer.
 2. Offer must be made to a specific person/party and not to public at large.
 3. Must be definite.
 4. Offer can be vague.
- a. 1 & 3 b. 2 & 3 c. 3 & 4 d. 1 & 4.
124. Which of the following agreements is/are void?
1. Agreement in restraint of legal proceedings.
 2. Agreement to stifle prosecution.
 3. Agreement by an outgoing partner with his partners not to carry on any business within a specified period or within specified local limits.
 4. Contingent Contracts.
- a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.



125. Which of the following offers do not constitute a valid offer?
1. An auctioneer displays a T.V. set before a gathering in an auction sale.
 2. Ram who is in possession of three cars purchased in different years says 'I will sell you a car'.
 3. A says to B, "Will you purchase my motor cycle for Rs. 20,000"?
 4. Ram communicates to Shyam that he will sell his car for Rs. 1,50,000.
a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
126. Which of the following agreements are void?
1. Agreements made under the unilateral mistake of fact.
 2. Agreements made under the bilateral mistake of fact.
 3. Agreements the consideration of which is unlawful.
 4. Contingent agreement.
a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
127. Which of the following is a requirement for misrepresentation to exist?
1. Misrepresentation should relate to a material fact.
 2. The person making a misrepresentation should believe it to be true..
 3. It must be made with an intention to deceive the other party.
 4. The person making a misrepresentation should not believe it to be true.
a. 1 & 2 b. 2 & 3 c. 3 & 4 d. 1 & 4.
128. A contracts with B to buy a necklace, believing it is made of pearls whereas in fact it is made of imitation pearls of no value. B knows that A is mistaken and takes no steps to correct the error. Now A wants to cancel the contract on the basis of fraud. Which of the following statement is correct?
- a. A can cancel the contract alleging fraud.
 - b. A cannot cancel the contract.
 - c. A can cancel the contract alleging undue influence.
 - d. A can claim damages.
129. Mr. J invited all his close friends for a dinner on the occasion of the successful completion of his research. He wanted to take good care of his friends and accordingly be arranged a very lavish dinner in a star hotel. On the day, to his shock and surprise the friends could not turn up to the dinner, consequently all the dishes and money were wasted. He was terribly disappointed. In the above situation which of the following remedies is/are available to Mr. J for the loss caused to him?
- a. Mr. J can file a suit against his friends for not attending to the dinner.

- b. Mr. J cannot have any remedy.
 - c. Mr. J can recover the expenses incurred for the arrangements from his friends.
 - d. Mr. J can file a suit for the special damages.
130. G paid Rs. 1,00,000 to H to influence the head of the Government Organisation in order to provide him some employment. On his failure to provide the job, G sued H for recovery of the amount. Which of the following is correct?
- a. The contract is valid and G can recover the amount from H.
 - b. The contract is void as it is opposed to public policy and G cannot recover.
 - c. G can recover the amount with interest.
 - d. G can recover the amount of Rs. 1,00,000 and damages.
131. M a popular singer, enters into a contract with the manager of a theatre, to sing at the theatre two evenings a week for the next two months and the manager of the theatre agrees to pay him at the rate of Rs. 1000 for each performance. From the sixth evening onwards, M absents himself from the theatre. In this context, which of the following remedies is/are available to the manager of the theatre against M?
- a. He is at liberty to put an end to the contract.
 - b. He cannot put an end to the contract.
 - c. He is entitled to compensation for the damages sustained by him through M on his failure to sing from the sixth evening onwards.
 - d. Both (a) and (c) above.
132. Ram, Rohit and Kiran jointly borrowed Rs. 2,00,000 from Rahim by executing a promissory note. Rohit and Kiran are not traceable. Rahim wants to recover the entire amount from Ram. Ram objected this move by saying he is liable to pay 1/3 of the debt only. Which of the following statement(s) is correct?
- a. Rahim can recover the entire amount from Ram.
 - b. Rahim can only recover 1/3 of Rs. 2,00,000 from Ram.
 - c. Rahim cannot recover any amount from Ram.
 - d. The promissory note is not executable against Ram as Rohit and Kiran are not traceable.
133. At the time of marriage between A and B, A's father promised to B's parents that he will pay five thousand rupees per month to B after her marriage with his son. On his failure to pay the amount B wants to sue A's father for the amount promised by him at the time of her marriage with A. Which of the following statement(s) is correct?
- a. B cannot sue A's father as the contract is void for lack of consideration.
 - b. B cannot sue A's father under the doctrine of privity of contracts.
 - c. B can sue A's father for breach of contract.
 - d. B cannot sue A's father as the contracts made at the time of marriage are not enforceable by law.



134. V purchased a used computer from P thinking it as a computer imported from USA, P failed to disclose the fact to V. On knowing the fact V wants to repudiate the contract. Which of the following statement(s) is correct?
- V can repudiate the contract on the ground of fraud.
 - V can repudiate the contract on the ground of misrepresentation.
 - V cannot repudiate the contract.
 - V can repudiate the contract on the ground of mistake.
135. An auctioneer in Mumbai advertised in a newspaper that a sale of office furniture would be held on December 23, 2003. a broker came from Hyderabad to attend the auction, but all the furniture was withdrawn. The broker from Hyderabad sued the auctioneer for loss of his time and expenses. Which of the following statement(s) is correct?
- The broker can get damages from the auctioneer for loss of his time and expenses.
 - The broker will not get damages from the auctioneer for loss of his time and expenses.
 - An invitation to make offer is a valid offer.
 - A declaration of intention by a person will give right of action to another.
136. Ankit, aged 17 years, falsely representing himself to be of 22 years, enters into an agreement to sell his property to Praveen and receives from Praveen a sum of Rs. 10,00,000 in advance. Out of this sum, Ankit buys an imported car worth Rs. 5,50,000 and spends the rest on a pleasure trip to France. After Ankit attained majority, Praveen sues him for the conveyance of the property or, in the alternative, for the refund of Rs. 10,00,000 and damages. The agreement between Ankit and Praveen is:
- Void ab initio* as it is a contract with a minor.
 - Voidable at the option of Praveen.
 - Would be valid if Ankit ratifies the agreement on attaining the age of majority.
 - Valid as Ankit has sold his own property for personal use.

137. Match the following:

- | | |
|------------------------|---|
| (i) Void Contract | (a) In case of this collateral agreements are void. |
| (ii) Voidable Contract | (b) Not enforceable in a court of law. |
| (iii) Illegal Contract | (c) An agreement enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others. |
| (iv) Valid Contract | (d) Enforceable at the option of both the parties. |

138. Match the following:

- | | |
|---------------------------|---|
| (i) Executed Contract | (a) Contract in which only one party has to perform his promise. |
| (ii) Executory Contract | (b) Consideration for the promise in a contract is already given. |
| (iii) Unilateral Contract | (c) Promise in a contract is outstanding on part of both the parties. |
| (iv) Bilateral Contract | (d) Reciprocal promises are to be performed in future. |

139. Match the following:

- | | |
|-----------------------|--|
| (i) General Offer | (a) Exchanging identical offers by two parties in ignorance. |
| (ii) Special Offer | (b) Offer made to the public in general. |
| (iii) Cross Offers | (c) Offer allowed to remain open for acceptance over a period of time. |
| (iv) Continuing Offer | (d) Offer made to a definite person. |

140. Match the following:

- | | |
|------------------------|--|
| (i) Coercion | (a) Involves Moral Pressure. |
| (ii) Undue Influence | (b) Person making false representation does not believe it to be true. |
| (iii) Fraud | (c) Involves Physical force. |
| (iv) Misrepresentation | (d) The person making false representation believes it to be true. |



1.51 ANSWERS TO MULTIPLE CHOICE QUESTIONS

1.	(c)	2.	(b)	3.	(d)	4.	(c)	5.	(c)
6.	(b)	7.	(d)	8.	(b)	9.	(d)	10.	(a)
11.	(d)	12.	(c)	13.	(b)	14.	(a)	15.	(b)
16.	(d)	17.	(b)	18.	(a)	19.	(a)	20.	(b)
21.	(b)	22.	(d)	23.	(d)	24.	(b)	25.	(a)
26.	(b)	27.	(c)	28.	(c)	29.	(b)	30.	(a)
31.	(d)	32.	(a)	33.	(d)	34.	(b)	35.	(c)
36.	(d)	37.	(d)	38.	(c)	39.	(d)	40.	(c)
41.	(c)	42.	(b)	43.	(c)	44.	(a)	45.	(d)
46.	(c)	47.	(a)	48.	(c)	49.	(b)	50.	(d)
51.	(a)	52.	(c)	53.	(b)	54.	(d)	55.	(b)
56.	(c)	57.	(d)	58.	(c)	59.	(b)	60.	(c)
61.	(b)	62.	(b)	63.	(c)	64.	(c)	65.	(d)
66.	(a)	67.	(b)	68.	(b)	69.	(a)	70.	(a)
71.	(d)	72.	(a)	73.	(a)	74.	(c)	75.	(a)
76.	(b)	77.	(d)	78.	(a)	79.	(a)	80.	(b)
81.	(b)	82.	(d)	83.	(b)	84.	(d)	85.	(b)
86.	(d)	87.	(b)	88.	(a)	89.	(b)	90.	(a)
91.	(d)	92.	(c)	93.	(d)	94.	(d)	95.	(a)
96.	(b)	97.	(c)	98.	(b)	99.	(a)	100.	(a)
101.	(a)	102.	(b)	103.	(c)	104.	(b)	105.	(a)
106.	(b)	107.	(a)	108.	(a)	109.	(b)	110.	(a)
111.	(d)	112.	(b)	113.	(b)	114.	(a)	115.	(a)
116.	(a)	117.	(a)	118.	(d)	119.	(a)	120.	(b)
121.	(c)	122.	(c)	123.	(a)	124.	(a)	125.	(a)
126.	(b)	127.	(a)	128.	(b)	129.	(b)	130.	(b)
131.	(d)	132.	(a)	133.	(c)	134.	(c)	135.	(b)
136.	(a)								
137.	(i) (b)	(ii) (c)	(iii) (a)	(iv) (d)					
138.	(i) (b)	(ii) (d)	(iii) (a)	(iv) (c)					
139.	(i) (b)	(ii) (d)	(iii) (a)	(iv) (c)					
140.	(i) (c)	(ii) (a)	(iii) (b)	(iv) (d)					