LAW OF CONTRACT -1

BRIEF OVERVIEW OF THE SUBJECT

Since time immoral people engaged in any form of business transactions have entered into contract or agreement either oral or written.

Law of Contract is that branch of law which **determines the circumstances in which promises made by the parties to a contract shall be legally binding**. It contains the remedies available in the courts of law against a person who fails to perform his obligations under contract and also illustrates the conditions under which remedies are available.

Law of Contract brings definiteness in business transactions as it **clearly defines the essentials of contract and rules for its formation, execution, breach and remedies available to the parties in the contract.**

Law of Contract provides **not only provides basic features of any legally enforceable business transactions but also the provides the essentials for every commercial law** like Sale of Goods Act 1930, Indian Partnership Act 1932 etc.

BRIEF INTRODUCTION TO THE SUBJECT UNITS/MODULE

The Law of Contract-1 is divided into following units.

UNIT-1

It deals with **formation of contract** underlining the Meaning, scope and nature of contract. It also describes the essentials rules or steps involved in the creation of contract like offer, acceptance, communication of offer/acceptance, Revocation of Offer/Acceptance, General/ Specific Offer, Invitation to Treat etc. It further describes the Effect of Void, Voidable, Valid, Illegal, Unlawful Agreements, Standard Form of Contract, Online Contracts.

UNIT-2

This unit deals with **Consideration and Capacity of parties** to enter into contract. It contains the kinds, essentials of consideration and also introduces to the concept of Privity of Contract. It further describes the position of Minor and effect of Minor`s contract/agreements.

UNIT-3

This unit deals with **Validity, Discharge and Performance of Contract.** It describes the concept and importance of free consent while forming any contract along with the situations presence of which makes contract devoid of free consent like Coercion, Undue Influence, Misrepresentation, Fraud, Mistake and Unlawful Consideration and Object with their effect on such contract.

It further describes how Contracts can be discharged alongwith Performance, Impossibility of Performance and Frustration of contract. It also introduces and describes the term breach of contract along with its forms like Anticipatory and Present breach.

UNIT-4

This unit deals with **Remedies and Quasi Contracts**. It describes the breach and remedies available to the parties for such breach which may be in the form of Damages or Quantum Merit (As Much As Earned). It further describes with the term Quasi Contracts.

UNIT-1

MEANING:-

Every day we enter into a plethora of contractual relations whether accidently or knowingly. Contracts are one of the oldest modes of obligations we are cognizant of. The barter system that was rife in the days of yore too is a branch of contracts.

Contract means an agreement between two private parties which creates legal obligations for each other. A contract can be either written or oral. Eg A promises to sell 20 oranges to B for Rs 500. B agrees to pay Rs 500. The agreement creates an obligation on A to give oranges to B and B has an obligation to pay Rs 500 for the oranges. This agreement is a contract.

According to Salmond a contract is “an agreement creating and defining obligations between the parties.”

According to Sir William Anson a contract means “ a legally binding agreement between two or more persons by which rights are acquired by one or more to acts or abstaining from doing something on the part of others.”

Section 2(h) of Indian Contract Act 1872 defines a contract as “an agreement enforceable by law”.

Contract= Agreement + Enforceability at law

NATURE and SCOPE

The law of contract differs from other branches of law in an important sense. It does not lay down a number of rights and duties which the law will enforce but it rather consists of a number of limiting

principles. Subject to which the parties may create right and duties for themselves which the law will uphold. Certain characteristics of contract are as follows:-

- **Civil nature**- The contract is of civil nature as its violation will make the person liable to pay compensation unlike Indian Penal Code where punishment is in the form of penalty (imprisonment) and fine
- **Privity of relation between the parties**- The contract essentially contains certain rights and duties between the persons who are parties to it and not against the third person unless otherwise agreed.
- **Jus in Personam not Jus in Rem**: - The Contract involves Jus in Personam (Right against or in respect of a specific person) and not Jus in Rem (Right against whole world). The Contract creates rights against specific person/persons who are parties to it.
- **Not the whole law of Agreements nor the whole law of obligations**: - It is the law of those agreements which create obligations, and those obligations which have their sources in agreements. Thus, all the obligations which are not contractual in nature like (torts/civil wrongs, quasi contracts judgements of courts) and agreements which are social in nature are excluded from the realm of law of contract

Eg. A owes a certain sum of money to B. B has the right to recover this amount from A. This right can only be exercised by B against A. This right of B is Right in Personam.

- **Compensation**: - In case of any breach of contract the party who is at breach is required to pay compensation for the damages (injury or harm) caused to other party.

- **Liquidated Damages**- Contract involves damages which are liquidated. i.e. where parties to the contract agrees that a certain sum of money would be payable in case of breach of contract.

OFFER/PROPOSAL

At the inception of every agreement, there must be definite offer by one person to another and its unqualified acceptance by the person to whom the offer is made. A person is said to make proposal or offer, when he "signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of other to such act or abstinence" S. 2(a)

The person making the offer is known as the offeror, proposer or promisor and the person to whom it is made is called the offeree or propose. When the offeree accepts the offer, he is called the acceptor S.2 (c).

Kinds of Offer

- GENERAL OFFER
- SPECIFIC OFFER
- COUNTER OFFER
- CROSS OFFER
- IMPLIED OFFER
- EXPRESSED OFFER
- STANDING OFFER

A. **GENERAL OFFER** –

When an offer is made to everyone or in public or in general, this offer is known as General Offer. It can be accepted by any individual or public at large whoever is interested in the offer offered. When an individual accepts the offer given, then the offeror and offeree enter into a contract. The reward will be given to that person who completed the task given or fulfilled the given condition.

CARLILL v. CARBOLIC SMOKE BALLS CO. (1893) 1 QB 256

In this case, Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company, according to the printed directions.

One lady, Mrs. Carlill bought and utilized the medicine as per the printed directions of the company, however suffered from influenza, she documented a suit to recuperate the reward of Rs.100. The court held that there was a contract as she had accepted a general proposal by utilizing the medicine in the recommended manner and as such as entitled to recover the Reward from the company.

B. **SPECIFIC OFFER**

The offer which is made to an individual or a particular group of individuals is said to be a Specific offer. It can be accepted by that individual or group of individuals.

Example: A offer to buy a car from B for Rs. 10 lakh. Thus, a specific offer is made to a particular person, and only B can accept the offer.

C. **COUNTER OFFER –**

When an offeror makes an offer to offeree and offeree with some modification in it makes a converse offer which makes the initial offer void and the other comes in existence, which reverses the party from the offeror to offeree and offeree to offeror. This kind of offer is known as Counter Offer.

HYDE vs. WRENCH (1840) 49 ER 132

In this case, the Defendant (Offeror) proposed to sell his farm for £1000 but the Plaintiff (Offeree) offered him £950 and subsequently rejected the offer. So, the offeree documented the case as the contract restricted the offeror, but it was held that when the offeree put the condition, the first offer becomes void which implies that the contract does not restrict the offeror as the offeree quashed the original offer.

D. **CROSS OFFER –**

When the offeror and offeree make the same offer to one another having the same terms out of knowledge of each other is known as a cross offer. In this case, there will be no contract due to acceptance of the offer offered.

Example: K makes an offer to sell his car for 10 lakhs to C and C in ignorance of that, makes an offer to buy the same car for 10 Lakhs, they are said to make a cross offer, and there is no acceptance, in this case, hence it cannot be a mutual acceptance.

TINN v. HOFFMAN (1873) (1873) 29 LT 271

In this case, Hoffman wrote a letter to Tinn with an offer to sell 800 tons of iron for the price of 69 rs. per ton. On the same day, with no information about the same, Tinn composed a letter to purchase the iron with the price and with the same condition as composed by Hoffman. It was held by the court that it was a cross offer and the contract restricts no parties.

E. **IMPLIED OFFER –**

When a proposal is given by body posture, gesture, or by action or by the conduct of the offeror is known as an implied offer. The offeree can accept the offer by understanding the acts of the offeror.

F. **EXPRESSED OFFER –**

When an offer is express in written or in verbal form then this offer is known as an Expressed offer. For Example – A writes a letter to D to buy his earphone for Rs.500. This is an expressed offer.

G. STANDING OFFER –

When the tender is presented to supply certain goods or any quantity as and when required, it is known as Standing Offer. In such a situation, a contract does not come into existence merely when the tender is accepted, but a contract comes into existence when the order is placed. Each order in such a case is accepted and when the offer is accepted, the contract comes into existence. In ***Perclval Ltd. V. London County Council Asylums and Mental deficiency Committee,*** the Plaintiff advertised for tenders for supply of goods. The defendant took the tender in which he had to supply to the company various special articles for a period of 12 months. In-between this the Defendant didn't supply for a particular consignment. The Court held that the Tender was a standing offer that was to be converted into a series of contracts by the subsequent acts of the company and that an order prevented *pro tanto(*to the extent) the possibility of revocation, hence the company succeeded in an action for breach of contract.

RULES FOR VALID OFFER

1. Offer must be communicated :-

Communication of offer is the most primary thing which is to be done for a valid offer. The offeror must communicate offer to the offeree. The communication can be either in oral or written form. The offer can directly communicate to the person specific to whom it is offered or it can be in general in nature.

In case of ***Lalman Shukla v. Gauri Dutt (1913)*** 11 ALJ 489The High Court of Allahabad that knowledge and acceptance of a proposal must be communicated to people are the basic essentials in order to constitute a valid contract. The person can claim reward if he gives his consent and perform the terms of the proposal.

2. Must create legal Relationship :-

A valid offer creates a legal relationship which means there must be an intention of the offeror to work under legal obligation or to be legally bounded by law not under social obligation.

For example : “X” (Father of Y) says to “Y”, if he pass the exam he will get a new video game. “Y” passed the exam asked his father to give him video game as he had promised to Y. Here X is not legally bound as the offer doesn’t create any legal obligation against X.

In case of ***Balfour v. Balfour*** (1919) 2 KB 571. They were married couple. Husband promised to his wife to send £30 per month. But husband failed to do so. Then wife filed the case against him and it was held that there was no intention to create legal relation. Thus the agreement was not valid.

3. Definite, unambiguous and certain in nature:

Offer must be certain as specified in [Section 29], it must be unambiguous means that the thing offered must clearly specified.

For example : Mitesh offered to sell his car to Tanmay. Mitesh is owned two cars one is of Ford & other is of BMW and Mitesh offered his Ford car to Tanmay but Tanmay thought Mitesh if offering him his BMW one. As in the offer it was not definite which car Mitesh wants to sell, thus this is not a valid offer.

4. It must distinguished from invitation to offer:-

The offer makes a person to enter into a legally binding contract whereas invitation to offer invites the person to enter into contract.

For example : A suit was displayed with a price tag in a shop. This is not a offer it is invitation to offer.

5. It may be general or specific in nature:-

The offer can be given to public at large in general by advertisement in newspaper etc. or it can be given specific person too.

6. Offer must be made with a view to obtain the assent :-

The offeror must obtain consent which should be "free" in nature as define under Section 14 as it define it should not be taken under coercion [section 15], undue influence [Section 16], fraud [Section 17], misrepresentation [Section 18] & Mistake [Section 20, 21 and 22].

7. A **statement of price is not an offer:-**

A mere statement of price is not construed as an offer to sell.

In ***Harvey v Facey*** (1893) App Cas 552 the parties were in negotiations about a sale and purchase and exchanged three following telegraphs in relation to it. To Mr. Facey and his wife, the respondents, the appellants telegraphed: 'will you sell us Bumper Hall Pen? (Harvey to Facey). Telegraph lowest cash price'. In response, they received a telegraph stating the lowest cash price was £900(Facey to Harvey). They telegraphed back saying 'we agree to buy B. H. P. for £900 asked by you. Please send us your title-deed in order that we may get early possession.' (Harvey to Facey). However, to that they did not receive any response.

The Privy Council (Jamaica) held that there was no binding contract formed between the parties. The final telegram by the appellants could not amount to the acceptance because the offer was never made in the first place. Communication was only an expression of willingness to negotiate, not a binding commitment.

Acceptance

The Indian Contract Act 1872 defines acceptance in Section 2 (b) as "When the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted. Thus, the proposal when accepted becomes a promise." An offer can be revoked before it is accepted.

As specified in the definition, if the offer is accepted unconditionally by the offeree to whom the request is made, it will amount to acceptance. When the offer is accepted it becomes a promise.

Example

'A' offer to buy B's house for rupees 40 lacs and 'B' accepts such an offer. Now, it has become a promise.

When an offer is accepted and it becomes promise it also becomes irrevocable. No legal obligation created by an offer.

Types of Acceptance

- **Expressed Acceptance**
  If the acceptance is written or oral, it becomes an Expressed Acceptance.
  Example
  'A' offers to sell his phone to 'B' over an email. 'B' respond to that email saying he accepts the offer to buy.

- **Implied Acceptance**
  If the acceptance is shown by conduct, It thus becomes an Implied acceptance.
  Example
  The Arts Museum holds an auction to sell a historical book to collect charity funds. In the media, they advertise the same. This says that a Mere Invitation to an Offer as per Indian Contract Act, 1872.
  The invitees offer for the same. Offer is expressed orally, so the offer to buy is an Express Offer, but by striking the hammer thrice the final call is made by the auctioneer. This is called Implied Acceptance.

- **Conditional Acceptance**
  A conditional acceptance also referred to as an eligible acceptance, occurs when a person to whom an offer has been made tells the offeror that he or she is willing to accept the offer

provided that certain changes are made to the condition of the offer. This form of acceptance operates as a counter-offer. The original offeror must consider a counter-offer before a contract can be established between the parties.

Acceptance by Whom?

Acceptance of particular offer:- offer made to a particular person can only be accepted by him and not by another person. If it being accepted by another person there is no valid acceptance.
Eg. A offers to sell 4 kg of wheat to B for Rs. 800. It can only be accepted by B and not by any other person.

Acceptance of general offer:- offer made to world at large, can be accepted by any persons to whom such offer is made.
Eg. ***CARLILL v. CARBOLIC SMOKE BALLS CO.*** (1893) 1 QB 256

RULES FOR VALID ACCEPTANCE

1. **It must be absolute and unqualified:-** there cannot be conditional acceptance, that would amount to a counteroffer which nullifies the original offer. Let us see an example. A offers to sell his cycle to B for 2000/-. B says he accepts if A will sell it for 1500/-. This does not amount to the offer being accepted, it will count as a counteroffer.
   Also, it must be expressed in a prescribed manner. If no such prescribed manner is described then it must be expressed in the normal and reasonable manner, i.e. as it would be in the normal course of business. Implied acceptance can also be given through some conduct, act, etc. The acceptance shall be in all terms of offer, whether material or immaterial, major or minor. Where

parties are not at ad idem in all matters concerning the offer there cannot be any contract.
However, the law does not allow silence to be a form of acceptance. So the offeror, cannot say if no answer is received the offer will be deemed as accepted.

2. **Acceptance must be communicated**
For a proposal to become a contract, the acceptance of such a proposal must be communicated to the promisor. The communication must occur in the prescribed form, or any such form in the normal course of business if no specific form has been prescribed.

Further, when the offeree accepts the proposal, he must have known that an offer was made. He cannot communicate acceptance without knowledge of the offer.

So when A offers to supply B with goods, and B is agreeable to all the terms. He writes a letter to accept the offer but forgets to post the letter. So since the acceptance is not communicated, it is not valid.

Felthouse v Bindley (1862) 11 C.B. (N.S.) 869 F offered to buy his nephew`s horse for 30 pounds saying " If I hear no more about it I shall consider the horse is mine at 30 pounds". The Nephew did not write to F at all, but he told his auctioneer who was selling his horses no to sell that particular horse because it had been sold to his uncle. The auctioneer inadvertently sold the horse. **Held** F had not right of action against the auctioneer as the horse had not been sold to F, his offer of 30 pounds not having accepted.

3. **It must be in the prescribed mode**
Acceptance of the offer must be in the prescribed manner that is demanded by the offeror. If no such manner is prescribed, it

must be in a reasonable manner that would be employed in the normal course of business.

But if the offeror does not insist on the manner after the offer has been accepted in another manner, it will be presumed he has consented to such acceptance.

So A offers to sell his farm to B for ten lakhs. He asks B to communicate his answer via post. B e-mails A accepting his offer. Now A can ask B to send the answer through the prescribed manner. But if A fails to do so, it means he has accepted the acceptance of B and a promise is made.

4. **Implied Acceptance**
   Section 8 of the Indian Contract Act 1872, provides that acceptance by conduct or actions of the promisee is acceptable. So if a person performs certain actions that communicate that he has accepted the offer, such implied acceptance is permissible. So if A agrees to buy from B 100 bales of hay for 1000/- and B sends over the goods, his actions will imply he has accepted the offer.

5. **Acceptance cannot precede an offer**
   An acceptance preceding offer cannot be a valid acceptance and cannot lead to a construction of contract.
6. **It must be given before the lapse of offer or before the offer is withdrawn**
7. **It must be given by parties or party to whom the offer is made**

Section 3: Mode of Communication

The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicate such

proposal, acceptance or revocation, or which has the effect of communicating it.

Communication of Acceptance ***Felthouse v. Bindley (1862)*** **6LT 157**

An offer is accepted when the acceptance is communicated. The communication must be made to the offeror and a communication of acceptance made to third person creates no contract.

Invitation to make an offer or d business ***Pharmaceutical Society of Great Britain v. Boots Cash Chemists*** **(1952) 2QB 795**

Goods are sold in a shop under the 'self service system'. Customers select goods in the shop and take them to the cashier for payment of the price. The contract in this case is not made when customer selects the goods but when the cashier accepts the offer to buy and receive the price.

Section 4: Communication When Complete

Communication of proposal

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

Communication of Acceptance

Communication of an acceptance is complete,— as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

Communication of Revocation

The communication of a revocation is complete,— as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge. Illustrations

(a) A proposes, by letter, to sell a house to B at a certain price." The communication of the proposal is complete when B receives the letter. The communication of the proposal is complete when B receives the letter."

(b) B accepts A's proposal by a letter sent by post." The communication of the acceptance is complete," as against A when the letter is posted; as against A when the letter is posted;" as against B, when the letter is received by A.
(c) A revokes his proposal by telegram." The revocation is complete as against A when the telegram is despatched. ". It is complete as against B when B receives it."
B revokes his acceptance by telegram. B's revocation is complete as against B when the telegram is despatched, and as against A when it reaches him."

Entores Ltd. V. Miles Far East Corporation **(1955) 2 ALL ER 493**

Where the an offer is made by a method of instantaneous communication like telex, the contract is only complete when the acceptance is received by the offeror and the contract is made at the place where the acceptance is received**.**

Carlill v. Carbolic Smoke Ball Company **(1893) 1 QBD 256 (discussed above)**

Section 5: Revocation of Proposal and Acceptance

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.

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

A proposes, by a letter sent by post, to sell his house to B. B accepts the proposal by a letter sent by post.

A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

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

Section 6: Revocation how made

A proposal is revoked

(1) by the communication of notice of revocation by the proposer to the other party; eg. At an auction sale, A makes the highest bid for B`s goods. He withdraws the bid before the fall of the hammer. The offer has been revoked before its acceptance.

(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;

eg A offered to sell some goods to B on Thursday and agreed to give him three days time to accept the offer. B accepted the offer on Monday, but by that time A has sold the goods to C. Held that offer lapsed. ***Head v. Diggon*** **(1828) 3 M. & R 97**

(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; eg. A a seller, agrees to sell wool to B subject to a condition that B pays agreed price before 14th of July. If B fails to price by 14th July, the offer stands revoked.

or

(4) by the death or insanity of the proposer, if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

Section 7: Acceptance must be absolute

In order to convert a proposal into a promise, the acceptance must-

(1) be absolute and unqualified;

(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If

the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

Kulburn Engineering Ltd. V. Oil and Natural Gas Corporation Ltd. **AIR 2000 Bom 405**

ONGC had invited a tender for installation of pipelines. Kilburn Engineering Ltd have submitted bid for the tender. ONGC issued a letter to Kilburn Engineering Ltd, the relevant part of which reads as follows: *"Based on your confirmation and submission of your price bid M/s. Kilburn is evaluated lowest tenderer. In view of the above and M/s. Kilburn being lowest tenderer, ONGC has considered your proposal for award of contract and the Notification of Award is likely to be issued on or before 30-9-1999".*

ONGC claims that based on the above letter they have accepted the bid by Kilburn Engineering and contract is formed..

The essential principle of Section 7 is that the offer and acceptance must be made absolute without giving any room of doubt. Offer and acceptance must be based upon three components Certainty, commitment and communication. If any of the three components are lacking either in offer or in the acceptance there cannot be a valid contract.

Section 8: Acceptance by performing conditions, or receiving consideration.

Performance of the conditions of proposal, for the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

Carlill v. Carbolic Smoke Ball Company (1893) 1 QBD 256 (discussed above)

Section 9: Promise, express and implied

In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

INVITATION TO TREAT

An invitation to treat is when you invite someone to make an offer. It is described as merely delivering information to tempt the other party to make an offer. Display of goods by a seller in his window, with prices marked on them, is not an offer but merely an invitation to the public to make offer to buy the goods at the market prices. Similarly, quotations, advertisements in newspapers for sale of an article do not constitute an offer. They are rather, an invitation to the public to make an offer.

A person in case the prices of the goods are marked cannot force the seller to sell the goods at those prices. He can, at the most, ask the seller to sell the goods to him, in which case he would be making an offer to the seller and it is up to the seller to accept the offer or not.

When appropriately responded by the other party, an invitation to treat results in an offer. It is made to the general public with intent to receive offers and negotiate the terms on which the contract is created. The invitation to treat is made to inform the public, the terms and conditions on which a person is interested in entering into a contract with the other party.

Harvey v. Facey (1893) App. Cas 552

Harvey was interested in buying a Jamaican property owned by Facey. He sent Facey a telegram stating "Will you sell us Bumper Hall Pen? Telegraph lowest cash price – answer paid." Facey responded stating "Bumper Hall Pen £900"

Harvey responded stating that he would accept £900 and asking Facey to send the title deeds. Facey then stated he did not want to sell. Harvey sued, stating that the telegram was an offer and he had accepted, therefore there was a binding contract.

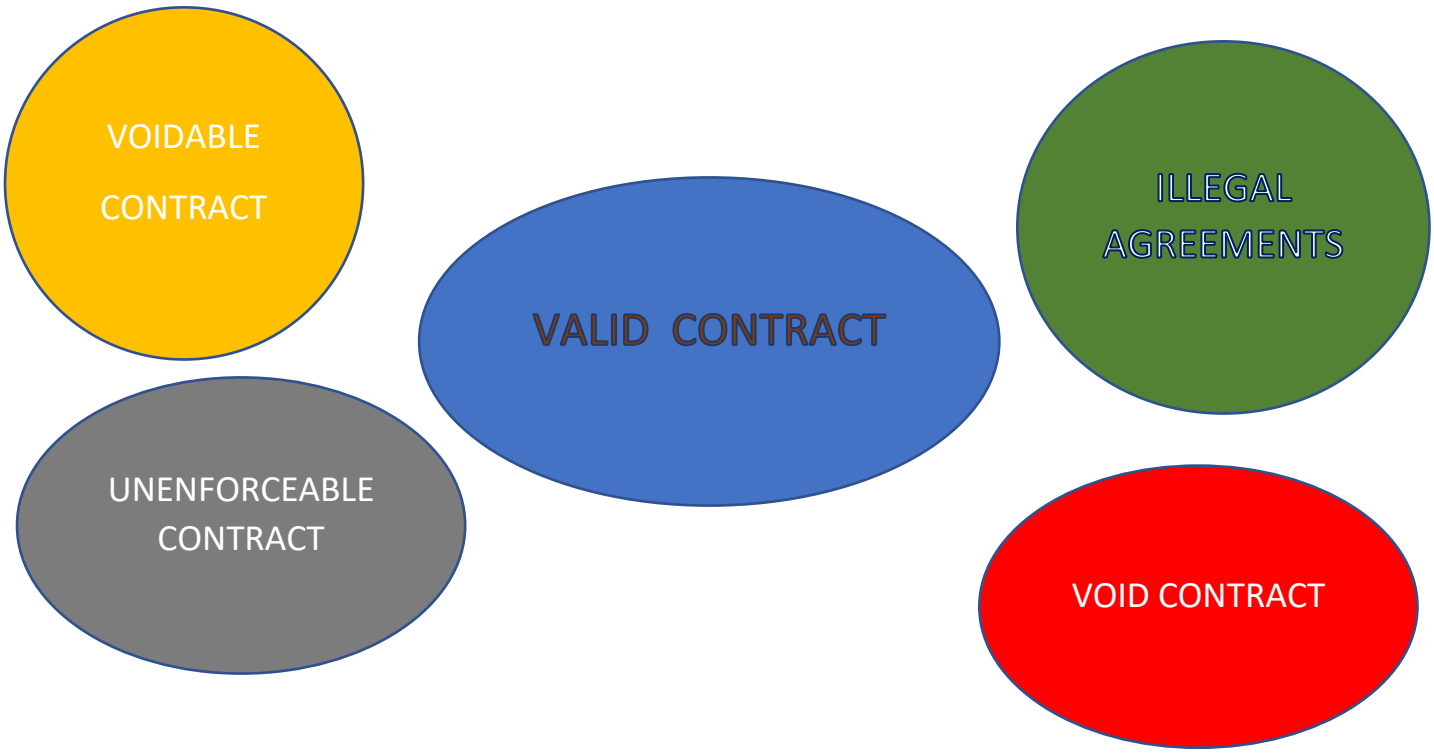
Held

The telegram was **an invitation to treat**, not a valid offer. Therefore, no valid contract existed. The telegram only advised of the price, it did not explain other terms or information and therefore could not create any legal obligation.

Harvey's telegram "accepting" the £900 was instead an offer which Facey could either accept or reject. He rejected it so there was no contract created.

Sl. No.	**Invitation to Treat**	**Offer**
1.	Invitation to treat(offer) is inviting someone to make a proposal.	An offer is a proposal
2.	It is an act which leads to the offer, which is made with an aim of inducing or negotiating the terms.	There is an intention to enter into a contract, of the party, making it and thus it is certain
3.	Invitation to treat does not make offeree liable.	An offer exposes the offeror to a contract if it is accepted by the offeree
	Eg advertisement, display of goods etc.	Eg. Lost and missing poster stating a promise to give reward to anyone who finds and delivers the thing lost.

Validity of Different Agreements



From the viewpoint of validity the contracts can be classified into valid or void or voidable or illegal or unenforceable contracts

- **Valid Contract:-** It is a contract which is an agreement enforceable by law. An agreements becomes enforceable by law when all essential elements of valid contract as enumerated in S.10 are present.
- **Voidable Contract:-** An agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others, is voidable contract [S 2(i)]. This occurs when element of free consent is missing like consent is caused by coercion, undue influence, misrepresentation or fraud, The party whose consent is not free may either rescind (avoid/repudiate) the contract or elect to be bound by it. It continues to be valid unless it is avoided by the party entitled to do so.

Example -A promises to sell a plot to B for rupees 5000. His consent is caused by coercion; such a contract is then said to be voidable and can be avoided or accept the contract.

- **Void Agreement :-** A contract that is void and unenforceable ab initio is called a void contract. According to 2(g)of the Indian Contract Act, An agreement that is not enforceable by law is said to be void. A void contract does not create any legal obligation.

  Example-A minor's agreement is void ab initio so it is void. This was held in the case of ***Mohini Bibi vs Dharmodar Ghose.***

- **Void Contract:-** When a contract ceases to be enforceable by law becomes void when it ceases to be enforceable. Void Contracts are contracts which when originally made were valid and binding on parties but eventually become void due to some circumstance.

  Example-A Contract to import goods from a foreign country is valid but war breaks out between the exporting and importing country after the contract is made the contract becomes void.

- **Illegal Agreements** :- An Agreement against the public policy or violates rules against public policies is called an illegal agreement. Thus agreements that are criminal or are immoral are illegal. All illegal agreements are void but not all void agreements necessarily are illegal.

  Example-An agreement to sell drugs, and Agreement to kill someone, etc.

- **Unenforceable Contract:-** An unenforceable contract is a contract that cannot be enforced in a court of law because of some technical defect. The defect may be in the form of absence of writing, registration, or barred by lapse of time. In case of breach or repudiation of such contracts the aggrieved party will not be entitled to legal remedies.

STANDARD FORM OF CONTRACT

In layman's terms, a standard form of contract is a 'take it or leave it' type of contract; in this type of contract, the other party is not in a position to negotiate with the terms and conditions laid out in the contract; instead, the party has the option of either entering into the contract or forgetting about it.

As a result, this type of arrangement has an impact on the fundamental right to bargain. These contracts are commonly referred to as adhesion contracts or boilerplate contracts. The most common types of standard forms of contracts are insurance company contracts, contracts on purchasing a washing machine, contracts on signing up for your e-mail, contracts on social networking sites, and so on.

Reasons for accepting Standard Forms of Contract are:-

People generally accept standard contract forms for the following reasons:

1. The primary reason for the acceptance of standard forms of contracts is that people do not thoroughly read the contract.

2. People in such contracts are primarily concerned with the price clauses and are unconcerned about the other clauses.

3. Often, a dominant party exerts pressure on others, and they discuss terms orally.

4. The most important reason for such contract acceptance is that people have no choice but to accept it.

The Benefits of Using a Standard Contract Form

1. It aids in contract cost reduction.
2. It is time efficient because there is no room for negotiation. As a result, the bidding process is sped up.
3. These contracts are made up of standardised clauses that can be used for a variety of purposes.
4. The standard form of contract clauses do not change frequently. As a result, it is simple for people to become acquainted with the terms of standard contacts in their industry.

Disadvantages of Using a Standard Contract Form

1. Its terms and conditions are determined by one party, and the other party has no bargaining power.
2. The prices of goods and services are fixed and cannot be negotiated.

3. The language used in normal contact is of high quality. Each word has a distinct meaning. As a result, it becomes difficult for people to comprehend it properly.

E-CONTRACTS

The electronic or e-contracts help in making agreements and transactions electronically in the physical absence of the parties. It aims at making lawfully binding contracts at a much faster rate with the use of latest technology. The electronic transactions today are used for a variety of purposes including recognition of digital signatures and electronic records, filing income-tax returns, fillings forms for admissions, paying bills online and others.

An e-contract is a contract modelled, executed and enacted by a software system. It is a contract "drafted" and "signed" in an electronic form.

FORMS OF ELECTRONIC CONTRACTS

The following forms of Electronic Contracts are in vogue in the Indian business scenario.

A) **E-Mail Agreements**: The e-mails which convey the clear intention of parties can be treated as a binding contract. E-mail contracts are similar to any other form of contracts and are therefore governed by the provisions of the Indian Contract

Act. Therefore any e-email contract cannot be executed or validly enforced until and unless it satisfies all the required fundamental requirements.

I. First, the terms and conditions of the contract must be agreed to by both the parties on the acceptance of an issued offer.
II. Second, intention to create a legally binding contract must be present.
III. Third, the vital element of consideration must be agreed upon.
IV. Therefore, all the statutes which relate to e-mail contracts must be read along with, and not in place of the Indian Contract Act.

The Information Technology Act (IT Act) has recognised e-mail contracts as legally valid and binding. It particularly mentions that a contract cannot be deemed invalid solely on the basis of it being an online exchange of offer and acceptance. Section 10A of the Information Technology Act hints at the validity of e-mail contracts.

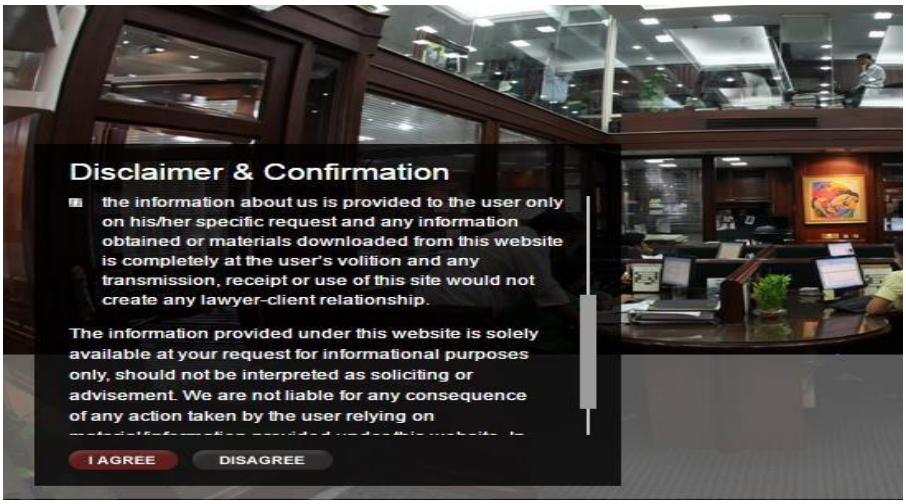
Section 10A of the IT Act: *"Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."*

E-mail records can be admissible as evidence in courts under the Indian Evidence Act. Hence issue of an offer or acceptance via mails can give rise to binding contracts and these electronic records can be used an evidence in courts to enforce the contracts.

Section 85A of the Evidence Act*:* "*The Court shall presume that every electronic record purporting to be an agreement containing the [electronic signature] of the parties was so concluded by affixing the [electronic signature] of the parties.*"

B) **On line Agreements**: On line agreements are of three kinds

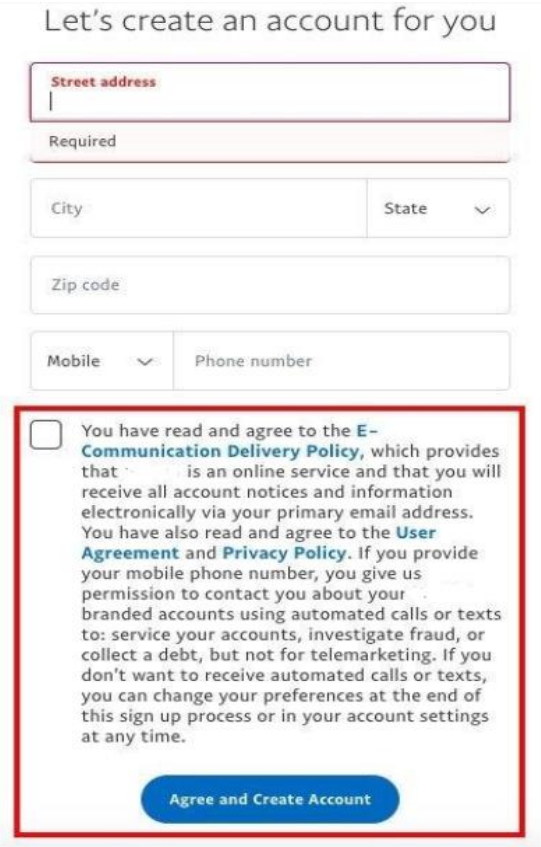
- **Browse Wrap Agreements** : Browse-wrap agreements cover the access to or use of materials available on a website or downloadable product. Only if the person agrees to the terms and conditions on the web page, then he can access the contents of the web page. These include the use of the website. These include the User Policies and terms of service of web sites and are in the form of a “terms of use” or “terms of service”, which can be used as the links at the corner or bottom of website.



- **Click-Wrap Agreement:** A clickwrap agreement is commonly found as part of the software installation process. It's also referred to as a "click-through" agreement or a "click-wrap licence." It is a take-it-or-leave-it contract with no negotiating power. If a customer likes a product and wants to buy it or use its service, he clicks on 'I accept' or 'Ok,' and if he rejects it, he cannot

buy or use it. Such contracts are generally found where one needs to download or use a software or where one needs to purchase any product or service online like buying product from Flipkart.

The following types of click-wrap agreements exist: 1. Type and Click, in which the user must type "I accept" or other specified words in an on-screen box before clicking a "Submit" or similar button. This indicates that the contract's terms have been accepted. A user cannot proceed to download or view the target information unless these steps are followed. 2. Icon Clicking, in which the user must click a "OK" or "I agree" button on a dialogue box or pop-up window. A user indicates rejection by clicking “Cancel” or closing the window.



- **SHRINK-WRAP** : *Shrink wrap* (Plastic Wrapping) contracts are boilerplate or license agreements or other terms and conditions which are packaged with the products. The usage or the tearing off the plastic wrapping of the product deems the acceptance of the contract by the consumer. The term ‘Shrink Wrap’ describes the shrink wrap plastic wrapping which coats software boxes or the terms and conditions like fees and payments, conditions and warranties which come with products on delivery.

  PC programming organizations broadly depend on the utilization of “shrinkwrap” permit assertions in the mass business sector circulation of programming. “Shrinkwrap” assertions are unsigned permit understandings which state that acknowledgment on the client of the terms of the assertion is demonstrated by opening the shrinkwrap bundling or other
  Bundling of the product, by utilization of the product, or by some other determined instrument.

FORMS OF E-CONTRACTS

E CONTRACTS

ONLNE AGREEMENTS

SHRINK WRAP

CLICK WRAP

BROWSE WRAP

How E-Contracts Can Be Entered Into: Contracts entered into via electronic means such as mail, fax, Whatsapp, and so on. The essential elements for establishing an electronic contract are laid out in the Indian Contract Act, 1872.

Offer and Acceptance: When an offer is made online, and the acceptance is also made online.

Lawful Purpose and Consideration: A contract is valid when its purpose is legal and the consideration is based on something. It is not deceptive in any way, and the parties are properly considering each other.

Parties' Capacity and Free Consent: Parties are capable of entering into a contract if they are competent to contract and their consent is free. Because the idea of executing an E-Contract is intimidating, many people are concerned about its validity, especially when compared to older binding contracts. The fact is that the Indian Contract Act of 1872 did not expressly set out any clear method of communicating proposals and which constitute approval.

Evidentiary Value of Electronic Records:

Defined in **section 65-A of the Indian Proof Act, 1872**, courts in India recognize online documents. Its system for furnishing digital records and documents is defined under Section 65-B of the Indian Evidence Act, 1872.

Anything contained in a digital record produced by a computer in written, stored or copying type should be deemed a report in compliance with Section 65-B of the Indian Evidence Act, 1872 which could be applicable to the case without any other clear facts in any courtroom. The applicability with the same must, therefore, become pursuant to a various conditions specified under section 65-B of that act. The report required to be created from a device must be regularly used with an individual with both the legal authority of the system at the time of its creation; the document must have been

downloaded or received even during normal course of activity; this data should be sent regularly to a device;

Electronic Signatures:

T**he Information Technology (Amendment) Act of 2008** replaced the word 'digital signature' with the phrase 'e-signature.' A e-signature is the particular technology and is irrevocably exclusive both to the signer and the paper. A digital document, though, is of an impartial and specific type of technology. But there is no electronic signature standard. This could either be a typed name or a hand-written signatures digitized photograph.

Recognizing the change in the execution of commercial transactions the Supreme Court in the case ***Trimex International FZE vs Vedanta Aluminum Limited, India***, 2010 (1) SCALE 574 disregarded the argument that exchanges over e-mail did not qualify as contracts and held that **"*Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialed.*"** The court turned down the plea of Vedanta which had opposed arbitration to resolve its dispute with the Dubai-based firm. Vedanta had taken the ground that there was no signed contract between them for arbitration.

"In the absence of signed agreement between the parties, it would be possible to infer from various documents duly approved and signed by the parties in the form of exchange of emails, letter, telex, telegrams and other means of telecommunication,"
Thus, the e-mails which convey the clear intention of the contracting parties can be treated as a binding contract.

UNIT-II

CONSIDERATION

Consideration is defined under Section 2(d) of the Indian Contracts Act, 1872. It is defined as when the promisee at the request to the promisor has:

- Done or abstained from doing something,(Past Consideration)
- Does or abstains from doing something, (Present Consideration)
- Promises to do or abstain from something, (Future Consideration)

Then such act or abstinence is called consideration.

Need for Consideration

Only promises backed by consideration are enforceable, because any promise made without any obligation is usually made rashly and without any thought. The reason for making consideration an essential part of a contract is that it places a burden on the parties to fulfil the contract's terms. For example, if A promises to give B a car without B doing or refraining from doing anything in return, the promise becomes unenforceable. This will be a gift rather than a contract.

Legal requirements for taking into account

Section 2d of the Indian Contract Act, 1872, clearly states that the consideration should be made at the will of the promisor; if the consideration is made at the will of a third party or is not according to the promisor, it is not a good consideration.

Legal Requirements for consideration

- **Can move from the promisee or another person**- Unlike English law, which requires the consideration to move at the request of the promisor, in Indian law, as long as there is consideration, it makes no difference who provided it. Furthermore, in the case of Chinnaya vs Rammyya, the

consideration can move at the request of the third party, but only if he is the contract's beneficiary.

***Chinnaya V. Rammaya* (1882) ILR (1876-82) 4 Mad 137**

A lady granted/ gifted a property consisting of some land to her daughter (defendant) by a gift deed. The deed was registered to the proper authorities. One of the terms of the deed was that the daughter had to pay a sum of Rs.653 annually. Later the old lady died, and the defendant refused to pay the money the sister whom she had promised to pay so. And hence the plaintiff sued the defendant for the recovery of the same.

Issue: Whether the plaintiff can bring an action against the defendant for the amount promised in a contract where the consideration for such promise has been furnished by the mother of the defendant (plaintiff's sister)?

Held agreement between the defendant and plaintiff the consideration has been furnished on behalf of the plaintiff (sister) by her own sister (respondents mother). Although the plaintiff was stranger to the consideration but since she was a party to the contract she could enforce the promise to the promisor, since under law, Consideration may be given by the promise or anyone on her behalf – vide section 2(D) of Indian Contract Act,1872.

As a result, the consideration provided by the old lady is sufficient consideration for the plaintiff to sue the defendant on her promise.

The sister was entitled to a decree authorising the payment of the annual sum.

It can be an act, abstinence, or even a promise- If the promisee does or refrains from doing something for the promisor at his request, it will be a good consideration.

It can be in the past, present, or future:

PAST- When the consideration is given prior to the promise. For example, A saves B at the request of the latter. After a month, B promises to pay A. A's act will be considered past consideration for B's payment.

PRESENT- When consideration is given concurrently with the promise made, this is referred to as present consideration or executed consideration. As an example, consider cash sales.

FUTURE- When the consideration for a promise is to be passed at a later date, this is referred to as future or executory consideration. For example, A promises to pay B if the latter fetches him a newspaper.

- **Consideration does not have to be adequate**- It is not required that the consideration be equal to or sufficient for the promise made. However, it is required that the consideration be something to which the law assigns some value. It is up to the parties, not a court of law, to determine the value of the consideration. For example, A sells a table to B, who pays him Rs 500. The court will have a difficult time determining the value of the table, so if A is satisfied with the amount given, the consideration is valid.
- **Should be real**- even if the consideration is insufficient, it should be real and not illusory. The consideration should not be physically or legally impossible, nor should it be based on an uncertain event or condition.
- **Should not be something the promisor is already obligated to do**- a consideration to do something the promisor is already obligated to do is not a good consideration. As an example, consider the public service performed by a public servant.
- **Should not be illegal, immoral, or contrary to state public policy**- Section 23 of the Indian contract states that consideration should not be illegal, immoral, or contrary to state public policy. The legality of the

consideration should be decided by the court, and if it is found to be illegal, no action on the agreement should be permitted.

Stranger to a Contract

It is a general principle that a contract can only be enforced at the request of the contract's parties. It could not be enforced by a third party. It is the result of the two parties' contractual relationship. However, Lord Dennings has repeatedly criticised this rule, claiming that it has never benefited the third party whose roots run deeper into the contract. This rule has two implications:

1. **A person who is not a party to a contract cannot sue upon it even though the contract is for his benefit and he provided consideration**
2. **A contract cannot confer rights or impose obligations arising under it on any person other than the parties to it. Eg.** If there is a contract between A and B, C cannot enforce it.

Dunlop Pneumatic Tyre Co Ltd v Selfridge Ltd [1915] AC 847

S brought tyres from Dunlop Pneumatic Tyre Co Ltd and sold them to D, a sub-dealer who agreed with S not to sell these tyres below the Dunlop`s list price. And to Pay Dunlop Co. 5 pounds as damages on every tyre D undersold. D sold two tyres at less than the list price and thereupon the Dunlop Co. sued him for breach. Held that **Dunlop Co. cannot maintain the suit as it was a stranger to the contract.**

Exception

This rule is subject to three exceptions:

- **A trust or charge:-** A person (beneficiary) in whose favour a trust or other interest in some immoveable property has

been created can enforce it even though he is not a party to the contract.

Eg. In ***Gandy v. Gandy*** 1884 30 Ch. D. 57 A husband who was separated from his wife executed a separation deed by which he promised to pay to the trustees all the expenses for the maintenance of his wife.

Held that agreement created a trust in favour of the wife and could be enforced

- **Marriage settlements**- When a marriage, family settlement, or partition agreement is made in such a way that it benefits another person who is not a party to the contract, that person may sue for the contract's enforcement.

- **Covenants running with the land**- In the case of a property contract, the purchaser will be bound by all of the land's conditions and covenants, even if he was not a party to the original contract.
- **Acknowledgement of estoppels**- Where by the terms of a contract is required to make a payment to a third person and he acknowledges it to that third person, a binding obligation is thereby incurred towards him. Acknowledgement may be expressed or implied. In the case of ***Khirod Behari Datta vs. Man Gobinda*** AIR 1934 Cal 682 acknowledgement had generated the right to third parties to enforce the contract between the parties. In this case, the tenant and the sub-tenant of a piece of land agreed between themselves that the sub-tenant would pay the tenant's rent directly to the landlord. Later, the landlord was allowed to get a decree for his rent directly against sub-tenant i.e. the sub-tenant was stopped from denying his liability to pay the tenant's rent for the reason that there was no such contract between him and the landlord.

  Moreover, a third party could also be able to seek relief against a promisor on the basis of promissory estoppel

principles. To succeed the third party would need to establish the elements of promissory estoppels.

- **Contract through an Agent-** If a person enters into a contract through an agent, where the agent acts within the scope of his authority and in the name of the person (principal).

Agreements without Consideration

Consideration is an essential component of any contract. According to the rules of consideration, having consideration for a contract is required. However, there are some exceptions to the "No consideration, no contract" rule. Let's have a look.

Is it possible to enter into a legal agreement without consideration ? No. A valid contract requires consideration, according to Sections 10 and 25 of the Indian Contract Act of 1872. In other words, if there is no consideration, there is no contract. As a result, you can only enforce a contract if there is a consideration.

While considerations are essential to a contract, the Indian Contract Act of 1872 provides some exceptions in which an agreement made without consideration is not void.

Exceptions to the 'No Consideration No Contract' Rule

Section 25 also lists the exceptions under which the rule of no consideration no contract does not hold, as follows:

- **Natural Affection and Love**

If an agreement is in writing and registered between two parties in close relation (such as blood relatives or spouse), and is based on natural love and affection, it is enforceable even if no consideration is provided.

For instance, Peter and John are brothers. In his will, their father names Peter as the sole heir to all of his property after his death. John files a lawsuit against Peter to assert his ownership of the property, but he loses. Peter and John reach an agreement in which Peter agrees to give his brother half of the property and register a document to that effect.

When Peter failed to keep his promise, John filed a lawsuit to recover his share of the property. The Court ruled that because the agreement was based on natural love and affection, the no consideration no contract rule did not apply, and John was awarded damages.

However, nearness of relationship does not necessarily import natural love and affection.

In ***Rajlukhy Dabee v. Bhootnath Mookerjee*** **1900 C.W.N. 488** the defendant promised to pay his wife a certain amount every month as maintenance. The promise was made in writing and the quarrels the husband and wife had were also mentioned. A case was filed to recover the amount promised to be paid as maintenance. However, the judge decided in favour of the defendant as although the two were in a near relation, the court held that there was no natural love and affection between them.

- **Compensation for Voluntary Services [S. 25 (2)]**

If a person has previously performed a voluntary service and the beneficiary promises to pay at a later date, the contract is binding if and only if the following conditions are met:

1. Previously, the service was provided voluntarily.
2. It was given to the promisor.

When the voluntary service was completed, the promisor was present (especially important when the promisor is an organization)

3. The promisor demonstrated his willingness to compensate for the volunteer service.

For example, Peter may discover John's wallet on the road and return it to him. John is relieved to have found his misplaced wallet and promises to pay Peter Rs 2,000. The no consideration, no contract rule also does not apply in this case. This contract is legally binding.

A supports B`s infant son. B promises to pay A`s expenses is so doing. This is a contract.

- **Promise to pay a Time Barred Debt**.
  If a person makes a written promise to pay a time-barred debt that is signed by him or his authorised agent, it is valid even if there is no consideration. The promise can be made to pay off the debt entirely or partially.
  For example, Peter owes John Rs 100,000. He had borrowed the money five years before. However, he never returned a single rupee. He signs a written promise to pay Rs 50,000 to John as the loan's final settlement. The 'no consideration, no contract' rule also does not apply in this case. This is a legally binding agreement.
- **Establishment of an Agency**
  No consideration is required to establish an agency, according to Section 185 of the Indian Contract Act.
- **Gifts**
  The no consideration, no contract rule does not apply to gifts. According to Explanation (1) of Section 25 of the Indian Contract Act of 1872, the rule that an agreement without consideration is void does not apply to gifts made by a donor and accepted by a donee.

- **Bailment**
  According to Section 148 of the Indian Contract Act of 1872, bailment is defined as the delivery of goods from one person to another for a specific purpose. This delivery is based on a contract that states that once the purpose has been met, the goods will be

returned or disposed of in accordance with the instructions of the person delivering them. A bailment contract does not necessitate the payment of any monetary consideration.

- **Charity**
  If a person undertakes a liability on the promise of another to contribute to charity, then the contract is valid. In this case, the no consideration no contract rule does not apply.

CAPACITY TO ENTER INTO CONTRACT

Introduction

Almost every transaction around us is a result of a contract. When you buy vegetables from the seller, you promise to pay him money in exchange for vegetables. If you own a shop, you enter into two contracts; one with the manufacturer of the goods and second with the customer who will buy the goods from your shop.

While buying vegetables we might not pay attention as to whether the seller is competent enough to enter into a contract. However, if you are a shopkeeper, you need to check and be sure that the manufacturer is legally capable of doing so. This becomes important for you to hold the manufacturer legally liable for any defaults committed by him during the terms of the agreement.

This article deals with the legal prerequisites of a party before entering into a contract.

Legal requirements for a person entering into a contract

Sec.11 of the Indian Contract Act, 1872 lists down the qualifications which enable a person in India to enter into contracts-

1. A person should have attained the age of majority as per the law of the country of which he is a citizen.

In India, the age of majority is governed by the Indian Majority Act, 1875. As per Sec. 3 of the Indian Majority Act, 1875, an Indian citizen is said to have attained the age of majority upon completion of eighteen years of age. In the USA (the majority of the states) and the UK, the age of majority is 18 years as well.

However, if a person is below the age of 18 years and a guardian has been appointed for him, he shall attain majority at the age of 21 years.

2. A person should be of sound mind at the time of entering into a contract.

As per Sec. 12 of the Act, a person can be said to be of sound mind when he can assess, understand his actions and realize the consequences of obligations imposed on him at the time of entering into a contract.

3. A person should not be disqualified under any law to which he is subject.

Disqualifications for entering into a contract

As per the Indian Contract Act, 1872 all persons who do not meet the criteria as per Sec. 11 of the act are incompetent to contract. Hence, we can deduce that the following category of persons do not possess the legal capacity to enter into a contract-

Minor

In India, a minor is an Indian citizen who has not completed the age of eighteen years. A minor is incapable of understanding the nature of the liabilities arising out of an agreement. Hence a contract with a minor is void ab initio (void from the beginning) and cannot be enforced in a court of law. The result is that a party cannot compel the minor to perform his part of obligations as enumerated in the agreement (plead specific performance of an agreement/rule against estoppel).

Mohori Bibee vs. Dharmodas Ghose

The respondent, Dharmodas Ghose, a minor, had mortgaged his property in favor of the moneylender, Brahmo Dutt for securing a loan amounting to INR 20,000/-.

Mr. Brahmo Dutt had authorized Kedar Nath to enter into the transaction through a power of attorney. Mr. Kedar Nath was informed of the fact that Dharmodas Ghose was a minor through a letter sent by his mother.

However, the deed of mortgage contained a declaration that Dharmodas Ghose was of the age of majority.

The respondent's mother brought a suit on the ground that the mortgage executed by his son is void on the ground that her son is a minor.The relief sought by the respondent was granted and an appeal was preferred by the executors of Brahmo Dutt before the Calcutta high court. The same was dismissed.

An appeal was then made to the Privy council. The Privy council **held** that *"A contract with a minor is void-ab-initio. Sec.7 of the Transfer of Property Act, 1882 states that a person competent to contract is competent to transfer a property. Hence, the mortgage executed by the respondent is void."*

However, if a minor enters into a contract and performs his part of obligations, the other party can be compelled to perform and fulfill its obligations, and, in such instances, the contract becomes legally enforceable.

Exceptions of contract being valid even if party is a minor

In certain instances, a contract entered into by the minor or by the minor's guardian for his benefit is valid in the eyes of law-

- A contract for marriage entered into by a minor/his guardian.
- A partnership contract entered into with a minor admitting him to the benefits of a partnership. However, the minor cannot be held personally liable for the losses incurred.
- A contract relating to the minor's property entered into by his guardian if it is for the benefit of the minor.
- A contract of apprenticeship with a minor.
- A contract supplying the minors with goods and services necessary for life.

  Websites such as YouTube expressly mention in their terms and conditions that any minor while using its services represents that he has the permission of his parent/ guardian to do so. Parents and guardians are held liable for the child's activity on such websites.

Person of unsound mind

- **Idiots**- An idiot, in medical terms, is a condition of mental retardation where a person has a mental age of less than a 3-year-old child. Hence, idiots are incapable of understanding the nature of the contract and it will be void since the very beginning.
- **Lunatic**- A person who is of sound mind for certain duration of time and unsound for the remaining duration is known as a lunatic. When a lunatic enters into a contract while he is of sound mind, i.e. capable of understanding the nature of the contract, it is a valid contract. Otherwise, it is void.
  Illustration- A enters into a contract with B for sale of goods when he is of sound mind. A later becomes of unsound mind. The contract is valid.
- **People under the influence of the drug**- A contract signed under the influence of alcohol/drug may or may not be valid. If a person is so drunk at the time of entering into a contract so that he is not in a position to understand the nature and consequences, the contract is void. However, if he is capable of understanding the nature of the contract, it will be enforceable.
  Illustration- A enters into a contract with B under the influence of alcohol. The burden of proof is on A to show that he was incapable of understanding the consequence at the time of entering the contract and B was aware of his condition.

Persons disqualified by Law

- **Alien enemy**- An alien enemy is the citizen of a country India is at war with. Any contracts made during the war period with an alien enemy are void. An Indian citizen residing in an alien enemy's territory shall be treated as an alien enemy under the contract law. Contracts made before the war period either gets dissolved if they are against public policy or remain suspended

and are revived after the war is over, provided they are not barred by limitation.
Illustration- A, of country X, orders goods from B, of country Y. The goods are shipped and before they could reach Y, country X declares a war with country Y. The contract between A and B becomes void.

- **Convicts**- A convict cannot enter into a contract while he is serving his sentence. However, he regains his capacity to enter into a contract upon completion of his sentence.
  Illustration- A, is serving his sentence in jail. Any contract signed by him during this period is void.
- **Insolvent**- An insolvent is a person who is declared bankrupt/ against whom insolvency proceedings have been filed in court/resolution professional takes possession of his assets. Since the person does not have any power over his assets, he cannot enter into contracts concerning the property.
  Illustration- A enters into a contract for sale of goods with B. Before the sale takes place, an insolvency suit is filed against A. A sell the goods to B during pendency of insolvency proceedings. The contract is valid.
- **Foreign sovereign**- Diplomats and ambassadors of foreign countries enjoy contractual immunity in India. One cannot sue them in Indian courts unless they submit themselves to the jurisdiction of Indian courts. Additionally, sanction from the central government is also required in such cases. However, the foreign sovereign has the authority to enforce contracts against the third person in Indian courts.
- **Body corporate**- A company is an artificial person. The capacity of a company to enter into a contract is determined by its memorandum and articles of association.
  Competency of Parties to enter into an e-contract
  A party can enter into an e-contract if it satisfies the legal requirements as per Sec. 11 and Sec. 12 of the Indian Contract Act, 1872.

Competency of Parties to enter into an e-contract

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Competency to contract on behalf of another

As per the Indian Contract Act, 1872 a person can employ another who shall enter into contracts with the third person on his behalf. The person in this instance is known as the principal and the other person so employed is known as the agent.

Any person may be employed as an agent. However, a minor or a person of unsound mind cannot be held liable for their acts to the principal.

An agent's authority may be either-

1. **express**, i.e. by word of mouth or documented in writing as in Power of Attorney
2. **Implied**, i.e. it might be deduced from the facts and circumstances of the case

Conclusion

Competency of parties to contract is one of the most important requirements to make an agreement valid and enforceable in a court of law.

A contract made by a person who does not possess the mental capacity to understand the nature and consequences of the contract is **void ab initio**. On the other hand, contracts with lunatics, people under the influence of the drug may/may not be void depending upon the circumstances surrounding the situation.

A person regains the legal capacity to contract upon removal of any of the disqualifications.

Companies while entering into contracts with one another always try to safeguard their interests. Representation and

indemnification are the most commonly used clauses to ensure that both the parties are competent to contract.

UNIT III

Validity, Discharge and Performance of Contract

Free Consent

One of the essential condition for the creation of contract is that the parties are required to be at *consensus-ad-idem* (they agree on same thing in the same sense at the same time and their consent is free and real)
S.10 of ICA 1872 also states that all agreements are contracts if they are being made by free consent of the parties.

Before exploring the term Free consent, one should understand the term consent in terms of creation of contract. Consent simply means any acquiescence or act of assenting to an offer. In terms of S. 13 of ICA 1872 Consent means *"when two or more persons agree upon the same thing and in the same sense".* So the two people must agree to the same thing in the same sense as well.

However, it must be kept in mind that just giving consent is not enough for a contract to be enforceable. The consent given must be free and voluntary. **Free consent** means a consent giving to an individual for the performance of an act on his own will.

The definition of free consent is provided under S.14 of ICA 1872, is Consent that is free from Coercion, Undue Influence, Fraud, Misrepresentation or Mistake. Consent is said to be so caused when it would have been given in the absence of such factors. The aim of this concept is to make sure that decision of the contracting parties was clear since the contract's inception. Therefore consent given under coercion, undue influence, fraud, misrepresentation or mistake has the potential to invalidate the contract.

For instance, A agrees to sell his car to B. A is the owner of two cars and wishes to sell the Swift. B thinks he is purchasing the Audi. Here A and B have not agreed upon the same thing in the same sense. Therefore, there is no contract for there is no consent.

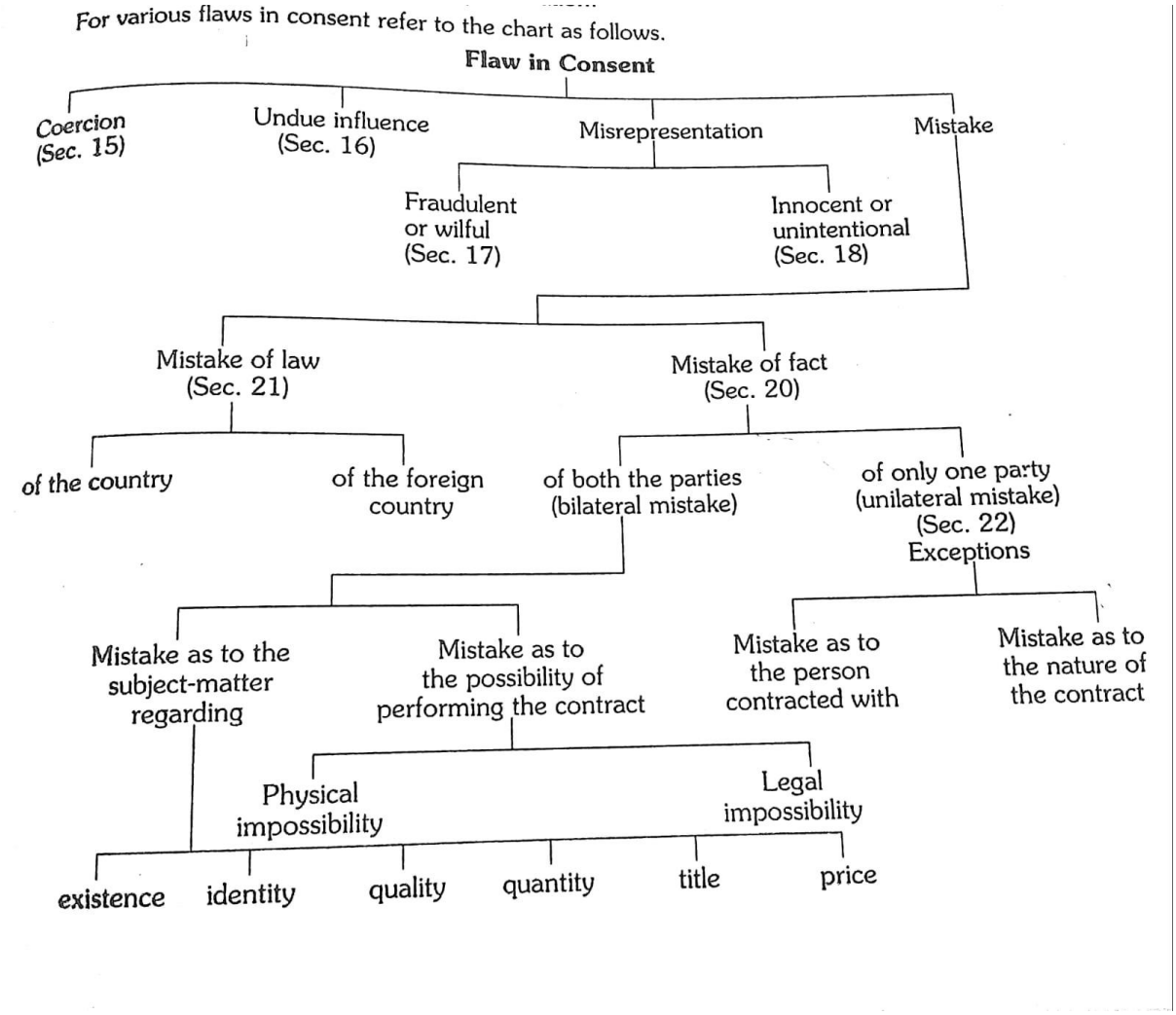
In the case *of* ***Raffles vs Wichelhaus (1964) 2 H&C 906*** two parties A and B entered into a contract for sale for 125 bales of cotton arriving from Bombay by a ship named "Peerless". There were two ships with the same name and while party A had one ship in mind, Party B had the other ship in mind. It was held by the court that both the parties were not ad idem and therefore the contract was void.

'In absence of Consensus ad idem, there is no contract'

Absence of Consent makes Contract null and void altogether
An illiterate women executed a gift deed in favour of her nephew under the impression that she was executing a deed authorizing her nephew to manage her lands. The evidence showed that the woman never intended to execute such gift deed, nor was the deed ever being read or being explained to her. Held that the deed was inoperative and void as the consent of the women was absent altogether. If she had known the true position, she would not have signed the document ***Bala Devi v. S. Majumdar*** **AIR (1956) Cal. 575)**

Presence of Consent however not a free one
There may be consent but it may not be a free one. It may happen that the consent is being caused by coercion, undue influence, fraud or misrepresentation. In all such situations the contract is voidable at the option of the party whose consent was so caused S. 19 and 19 –A of ICA 1872. Eg. A being forced to sign sale deed of his house in favour of B at the point of knife. A being

fully aware about the contents of the deed but his consent is still not free. The Sale deed is voidable at the option of A.
In the above scenario the consent is not altogether missing, but is not free. In terms of Salmond it is *error in causa (*error in the inducing cause)



COERCION

When a person is compelled to enter into contract by use of force by other party or under threat, 'coercion' is said to be applied. It amounts to commiting, or threatening to commit, any act forbidden by the Indian Penal Code, 1860 or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing other person to enter into an agreement. It is immaterial whether the IP. C. is or is not in force in the place where coercion is applied S.15.

Eg.A, on board an English ship on the high seas, causes B to enter into an agreement by an amounting to criminal intimidation under I.P.C. A afterwards sues B for breach of Contract at Calcutta. There is an employment of coercion by A.

A threat amounting to coercion may proceed from a stranger to a contract and likewise it may be directed against any body not necessarily the other contracting party. The intention of the person using coercion should, however, be to cause any person to enter into an agreement.

Coercion includes 1. Fear, 2. Physical compulsion and 3. Menace to goods.

1. **Committing or threatening to commit any act forbidden by law**

   A young widow agreed to adopt a boy under the threat that her husband`s body would not be cremated unless she consented to the adoption. Held threat the consent given by the widow was not free but was induced by coercion. Subsequently the adoption was set aside.(***Ranganayakamma v. Alwar Setty*** **(1889) 13 Mad 214)**

2. **Unlawful detaining or threatening to detain any property**
   An agent refused to handover books of accounts of a business to the new agent after the expiry of his term unless the principal gave him release from all the liability in respect of agency. Held release deed was given under coercion and as voidable at the option of the principal.(***Mutha v. Muthu Karuppa,*** **(1927) 50 Mad 786)**

Effect of Coercion

It is quite obvious that the contract entered into due to the effect of coercion do not have free consent. In this way, the following instances are possible:

1. As discussed earlier, the contract brought about due to coercion becomes voidable, at the option of the aggrieved party.(S. 19 ICA)
2. With respect to the result of recission i.e. revocation of a voidable contract, the party who revokes a void contract, have to restore any benefit received from the other party.(S. 72)
3. If due to coercion money has been paid or certain stuff is provided, it must be repaid or returned.

The onus of proving that the consent of a party to a contract was caused by coercion and that he would not have entered into it had coercion not been employed, lies on the party who wants to relieve himself of the consequences of the coercion.

Exceptions

It must be noted that mere threat by one party to other to prosecute does not result in coercion **(*Askar Mirza v. Bibi Jai Kishori* (1912) 16 IC 344)** The aggrieved party must

have entered into a contract out of that threat, which can be avoided on account of coercion. Threat to strike is no coercion, as the strike may be a lawful weapon for collective bargaining. Similarly, any contract made under a statutory compulsion, there is no coercion in existence.

Threat to commit suicide amounts to Coercion?

Threat to commit suicide amounts to coercion neither 'suicide' nor 'threat to commit suicide' is punishable under IPC. But an attempt to commit suicide is an offence. However, in the case of ***Amiraju vs. Seshamma*** **(1917) 41 Mad. 33**, a person held out a threat of suicide to his wife and son and induced them to write a release deed in regard to certain property in favour of his brother. It was held that the deed was obtained by coercion. The court held that though a threat to commit suicide is not punishable under the IPC. But this does not mean that it is not forbidden by law. So threat to commit suicide amounts to coercion.

Duress under English Law

In the English Law 'duress' is a term which is almost similar to coercion defined in S 15 ICA. Duress, consists of actual violence or a threat of violence to a person. It only includes fear of loss to life or bodily harm, and not to his goods.

Difference between Duress and Coercion

Most people consider duress and coercion as synonyms however a thin line exists between both the doctrines which separate them.

1. While duress is exercised concerning the life threats to an individual or his/her family or close relatives, coercion can be exercised against any person.

2. Duress causes an imminent threat to an individual while coercion does not cover the ambits of imminent threat.
3. Unlawful detention is not considered duress under English law while detention of goods is considered a kind of coercion.

UNDUE INFLUENCE

At times the party is compelled to enter into contract against his will as a result of unfair persuasion by the other party. Such thing happens when there exists a special relationship between the parties such as that one party is in position to exercise undue influence over the other. Undue influence is also known as moral coercion.

Section 16 of ICA states that 'a contract is said to be induced by undue influence where the will of the party consenting is able to be dominated by the other one due to the existence of the relation subsisting between them'. One party influence the other while the contract is formed to get an unfair advantage over the other. It further qualifies that a person is able to dominate the will of the other if he:

1. Has a real or apparent authority arising out of fiduciary relations (relationship of trust) between them, or
2. Forms the contract with a person whose mental capacity, due to illness or age or due to mental distress is temporarily or permanently affected.

Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other.

In addition, this section mentions that it will not affect Section 111 of the Evidence Act, 1872 which talks about good faith in the transaction between the parties.

All the cases of undue influence fall under the following categories.

Relationship- For a case to fall in this category, it is not mandatory that the parties are related to each other by blood relation, marriage or through adoption but what is necessarily required is that one party must be in a superior position and be able to dominate the will of the other. It does not restrict itself to strict fiduciary relationships but applies to all varieties of relationships. However, only the existence of such relationships is not able to prove undue influence but there must be an exercise of the dominance.

An illiterate elderly woman made a deed of gift of whole of her property in favour of her nephew who managed her affairs. Held the gift should be set aside on the ground of undue influence ***Inche Noriah v. Shaikh Alle Bin Omar*** **(1929) A.C 127**

Dominating Position- In this category of undue influence, the circumstance under which the contract was made is taken in the account along with their relationships. The existence of dominating position along with its use is mandatory to invoke an action. If once dominance is established, unless any contrary object appears, it is presumed that there was a use in the particular instance.

Unfair Advantage- In ***Ganesh Narayan Nagarkar v. Vishnu Ramchandra Saraf***(**1907) ILR Bom 439**.it was stated by the court that, "unfair advantage is the advantage or enrichment which is obtained through unrighteous or unjust means". It comes into existence when the bargain favours the person who enjoys influence and which proves unfair to others. Likewise in the case of

Real and Apparent Authority- In this type of influence, there is a real authority like a police officer or an employer who uses his dominance for his enrichment. Apparent authority is pretending real authority without its existence.

Fiduciary Relationship- This type of relationship is solely based on the existence of trust between the parties for each other. It is such that

one of the parties naturally reposes its confidence in the other one and with an increase in that confidence gradually, one party starts influencing the other. This type of relationship usually exists between doctor and patient, lawyer and client, parent and child, teacher and student and beneficiary of a trust etc. An example of such type of case was in ***Mannu Singh v. Umadat Pande*****(1890) ILR 12 All 523**where a guru influenced his disciple to gve his property in gift by promising to secure benefits to him in the next world. The court set the gift aside as it was not formed with free consent.

Parent and Child- As parent fulfil every need of their children and want them to act on their supervision, there is an inherent influence on children from their childhood and that follows throughout their life. Thus, when any benefit is transferred to the parent or any third-party on the expense of the child, it is considered as jealousy on the part of a parent by the courts of equity. Thus in every case, children's age is always taken into account to determine the extent of parental influence. In ***Lancashire Loans Ltd v. Black*** **[1933] All ER Rep 201**, when a girl just before her marriage entered in a money lending transaction as surety for her mother, it was held to be entered under undue influence.

Affecting Mental Capacity- It is an established law from ***Inder Singh v. Dayal Singh*** **AIR 1924 Lah 601**.that, "undue influence arises when one party taking the advantage of the temporary or permanent advantage of another's mental condition executes a contract. But, a mere distressed state of mind cannot amount to undue influence until the defendant has used this opportunity to his advantage. Similarly, instigating a person to enter into a contract who has just attained his majority amounts to undue influence under this category due to lack of plaintiff's experience.

Illustration- A entered a contract with B, who is a minor and is unable to understand the complex terms of the contract. Unless A proves that the contract was entered in good faith and with adequate consideration, it will amount to undue influence

A minor female child who had lost her parents was living with her cousin brother who was in the position of *loco-parent* (in the place of parents). A deed was executed in the favour of latter. Held there was undue influence ***Niko Devi v Kripa,*** **AIR (1989) HP. 51.**

Effects of Undue Influence

Under Section 19A of the Contract Act, when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused.

Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as to the Court may seem just.

Eg. A, a money-lender, advances Rs. 100 to B, an agriculturist, and, by undue influence, induces B to execute a bond for Rs. 200 with interest at 6 per cent. per month. The Court may set the bond aside, ordering B to repay the Rs. 100 with such interest as may seem just.

FRAUD

Fraud implies and involves any of the following acts committed by a contracting party or his connivance or his agent with the intention of deceiving or inciting another party or his agent to enter into the agreement.

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

Mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud, unless the circumstance of the case is such that, regard being had to them, it is the duty of the person keeping silence to speak, or unless his silence, in itself is, equivalent to speech. Illustration– A sells by auction to B a horse, which A knows to be unsound, A says nothing to B about the horse's unsoundness. This is not fraud in A.

Ambiguous Statements

Where the representer makes an ambiguous statement, the person to whom it is made must prove that he understood that statement in the sense that it was in fact false. The representer will be guilty of fraud if he intended the statement to be understood in that sense, and not if he honestly believes it to be true, but the person relying on it understands it in a different sense.

Active Concealment

Mere non-disclosure of some immaterial facts would not per se give a right to recission unless it is further found that the consent has been secured by practicing some deception. Where the seller sold property

already sold by him to a third person, his conduct amounted to active concealment and fraud, and the buyer could recover the price despite the agreement that the seller could not be responsible for a defect in title.

Silence as Fraud

Silence about facts is not fraud per se. Unless there is an obligation to talk or if it is equal to expression, mere silence is not fraud. Mere silence or non-disclosure of facts would not constitute a wrongful act unless the defendant is under an obligation to talk and conceal the facts of a particular transaction or trade. In ***Mithoo Lal Nayakv. LIC of India*** **AIR1962 SC 814** the insured did not disclose, even after asked to do so, the fact that several other insurance companies have declined to insure his life,. Held It amounted to fraud. Likewise in ***Percival v. Wright*** **(1902) 2 Ch. 421** the director of a company having inside information that value of the share is likely to go up was under no duty to disclose the fact to shareholder whose shares he purchased.

Effect of Fraud

A contract, consent to which is obtained by fraud, is voidable under s 19. The party deceived has the option to affirm the contract and insist that he be put in the position in which he would have been if the representations were true, or he may rescind the contract to the extent it is not performed. Upon rescission, he is liable to restore the benefit received by him under section 64 and may recover damages.

Some instances where mere silence amounts to fraud are as follows:

1. **Contract of immovable property**

Under Section 55(i)(a) of the Transfer of Property Act, 1882, the seller is under an obligation to reveal to the buyer any material defect or shortcoming in the property or in the seller's title of which the seller is aware.

2. Contract of marriage

Each party to a contract of marriage is bound by a duty to disclose every material fact. If the accurate facts are not revealed, the other party can break off the engagement and revoke the contract. In the case of ***Anurag Anand v. Sunita Anand*** (1996), it was held that caste, income, age, nationality, religion, educational qualifications, marital status, family status, financial status, would be considered as material facts and circumstances.

MISREPRESENTATION

The term "misrepresentation" means a false representation of fact made innocently or non-disclosure ofa material fact without any intention to deceive the other party. As per Section 18 "Misrepresentation" means and includes-

"The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;

Any breach of duly which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him, by misleading an other to his prejudice or to the prejudice of anyone claiming under him;

Causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing
which is the subject of the agreement."

Essential elements of misrepresentation:

By a party to a contract: The representation must be made by a party to a contract or by anyone with his involvement or by his agent. Thus, the misrepresentation by a stranger to the contract does not affect the validity of the contract.

False representation: There must be a false representation and it must be made without the knowledge of its falsehood i.e. the person making it must honestly even it is to be true.

Representation as to fact: The representation must relate to a fact. In other words, a mere opinion, a statement of expression or intention does not amount to misrepresentation.

> **"Innocent misstatement made into good faith OR without any intention to cause loss"**

E.g. A farmer says that his land is very productive and produces 100 quintal per acre. This is misrepresentation and buyer can cancel the contract.

Note: When the buyer has an opportunity to check the misrepresentation, but he fails then buyer cannot cancel the contract.

E.g. An owner of factory, while selling his factory, express his opinion as my factory produces 1000 kg per annum and requested the buyer to find out exact production by checking "production-record". If the buyer fails to check the production record then buyer cannot blame seller.

Effect of Misrepresentation [section 19]

A contract, consent to which is obtained by misrepresentation, is voidable under s 19. The party deceived has the option to affirm the contract and insist that he be put in the position in which he would have been if the representations were true, or he may rescind the contract to the extent it is not performed. Upon rescission, he is liable to restore the benefit received by him under section 64 and may recover damages.

MISTAKE

A mistake is said to have occurred where the parties intending to do one thing by error do something else. Mistake is "erroneous belief" concerning something.

Classification of Mistake of Law:

(a) Mistake of Law of the country (In sense of penalty): The contract is not voidable because everyone is supposed to know the law of his country. e.g. disobeying traffic rules". It works on the principle '***Ingnorantia non excusat' :*** ignorance of the law is no excuse. In ***Solle v. Butcher*** **(1950) 1 K.B 671** A party cannot be allowed to get any relief on the ground that it had done any particular act in ignorance of law. A

(b) Mistake of Foreign Law(void-ab-initio): A mistake of foreign law is treated as mistake of fact, i.e.the contract is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.

Mistake of fact

Mistake of fact be either unilateral mistake or bilateral mistake.

1. **Unilateral mistake [section 22]**: The term 'unilateral mistake' means where only one party to the agreement is under a mistake. According to section 22, "A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to matter of fact." An unilateral mistake is not allowed as a defence in avoiding a contract unless the mistake is brought by the other party`s fraud or misrepresentation. In ***Smith v Hughes*** **(1871) L.R. 6 Q.B. 597** H brought oats from S a sample of which being shown to H. H erroneously thought that oats were old. The oats were however, new. Held, H could not avoid the contract.

2. **Bilateral mistake [section 22]**: The term 'bilateral mistake' means where both the parties to the agreement are under a mistake. According to section 20, "where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void."

UNLAWFUL CONSIDERATION AND OBJECT

According to Section 23, in the following cases consideration or object of an agreement is unlawful:

1**. If it is forbidden by law:**

Where the object of a contract is forbidden by law, the agreement shall be void. An act is said to be forbidden if it is punishable by criminal law or any special statute, or if it is prohibited by any law or order made in exercise of powers or authority conferred by the legislature.

Example:

(1) A and B agreed to deal in smuggled goods. It is forbidden by law and therefore void.

(2) A committed B's murder in the presence of C. A promises to pay Rs. 500 to C, if C does not inform the police about the murder.

The agreement in example No. 2 given above is illegal as its object is unlawful. Besides, A and C will be liable for the act of murder and its concealment under the Indian Penal Code.

2. **If it is of such a nature that if permitted, it would defeat the provisions of any other law:**

The object of an agreement may not be directly forbidden but indirectly, it may defeat the object of any other law, the agreement would be void in such a case.

Example:

(1) A failed to pay his land revenue. Therefore, his estate was sold for arrears of revenue by the

Government. By the law, the defaulter is prohibited from purchasing the land again. A asks B to purchase the estate and later on, transfer the same to him at the same price. The agreement is void as it will defeat

the object of the law which prohibits a defaulter to purchase back the land, for indirectly

A will again become the owner of the estate.

3**. If it is fraudulent**:

If the object of an agreement is fraudulent, i.e., to cheat people, it is void. Example:

A, B & C enter into an agreement to sell bogus plots of land in Delhi. The agreement is void as it is fraudulent and thereby unlawful.

4**. If it involves or implies injury to the person or property of another:** Law protects property and person of its citizens. It cannot permit any contract which results in an injury to the person or property of any one.

Examples:

A promises to pay Rs. 500 to B if B beats C. It involves injury to C, hence it is unlawful and void.

5**. If the Court regards it as immoral or opposed to public policy**: If the object of an agreement is immoral or opposed to public policy, it will be void. Morality here means something which the law regards as immoral.

Examples:

(1) A agrees to give his house on rent to a prostitute for her immoral purpose. A cannot recover the rent of his house if he prostitute refuse to pay. However, he may be allowed to get his house vacated from the prostitute as it will put an end to the immoral purpose.

Effect of Illegality :

1. An illegal agreement is void: It is not enforceable at law.

2. Collateral transactions to illegal transactions are also void:

Not only the illegal agreement is void but also the collateral transactions are void.

Example:

A borrows Rs. 2,000 from B to buy a revolver to shoot C. Since the object of the transaction is illegal, B cannot recover his Rs. 2,000 if he has given the loan, knowing that A is taking the loan to purchase a revolver to shoot C.

3. **In cases of fraud, coercion, etc., money or property transferred can be recovered:**

Where the illegality is the result of coercion and fraud of the other party, the Court can compel the guilty to return the money paid or property transferred.

4. **Agreement partly legal and partly illegal (Sec. 24):**

An agreement may consist of promises which are legal and illegal. If the legal promise can be separated from the illegal one, the legal promise can be enforced. In Such a case the illegal part will be void.

Where the legal promise cannot be separated from the illegal one, the whole of it would be void.

Where there is a single consideration for one or more unlawful objects, the agreement is void.

Example:

(1) A promises to manage B's factory, where genuine and bogus motor parts are manufactured. B agrees to pay A (Manager) a salary of Rs. 1,000 per month.

The agreement is void as partly it is legal and illegal and the legal part cannot be separated as the salary is for both the parts.

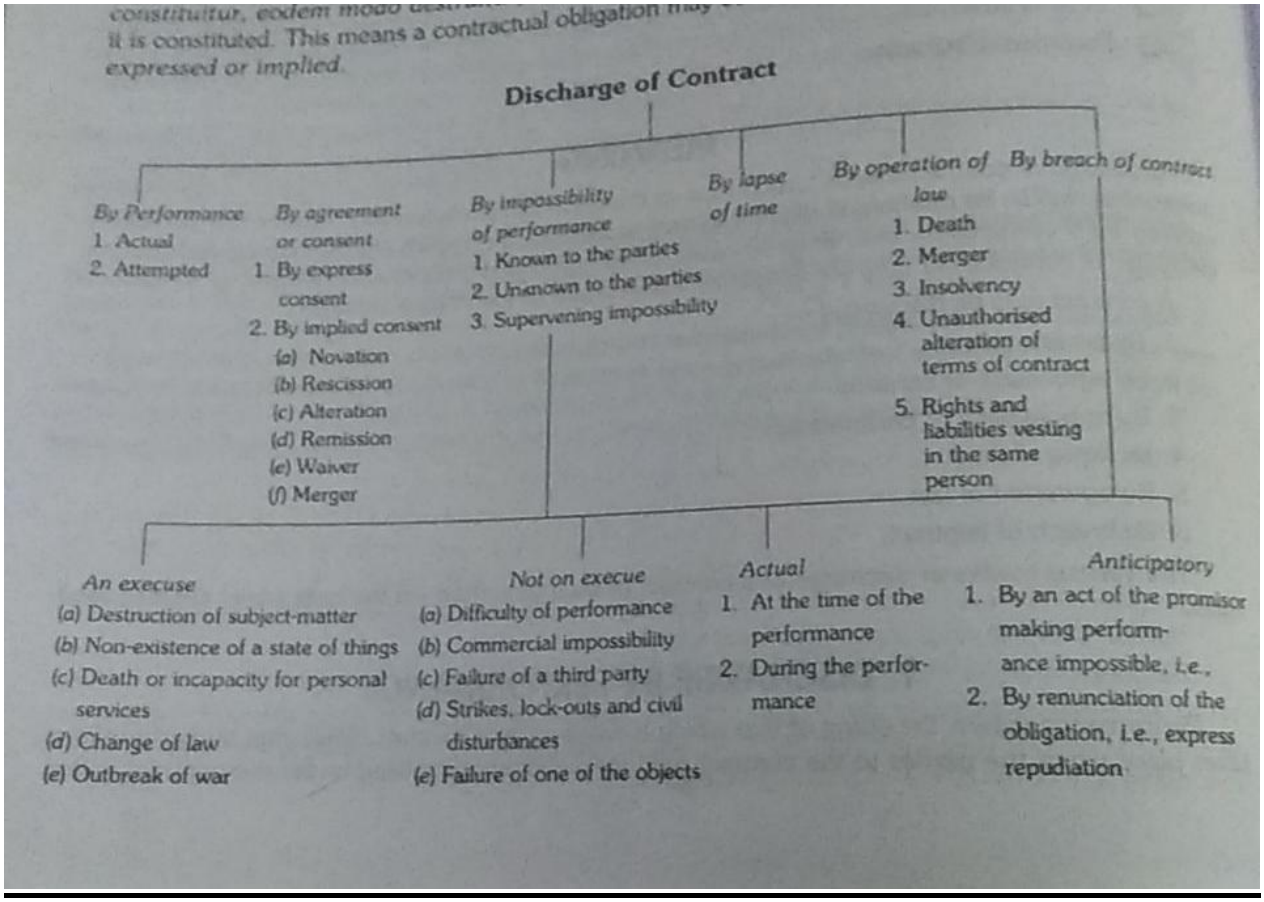
5.Reciprocal promises, legal and illegal (Sec. 57):

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

DISCHARGE OF CONTRACT

Meaning

Discharge of Contract means termination of contractual relationship between the parties. A contract is said to be discharged when it ceases to operate (when the rights and obligations created by it comes to an end)



1. Discharge by performance

Fulfilment of obligations by a party to the contract within the time and in the manner prescri bed in the contract.

(a) **Actual performance** – no party remains liable under the contract. Both the parties performed.

(b) **Attempted performance or tender**.:- Promisor offers to perform his obligation under the contract but the promise refuses to accept the performance. It is called as attempted performance or tender of performance but the contract is not discharged.

2. Discharge by mutual agreement

(a) **Novation [Sec 62]** – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.

- Between the same parties (by change in the terms and condition)
- Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-

(1) All the parties must consent to novation

(2) The novation must take place before the breach of original contract.

(3) The new contract must be valid and enforceable.

An existing mortagage deed was discharged by the substitution of new agreement of mortgage. The new agreement was not enforceable for the want of registration Held the parties could fall back upon the original mortgage ***Shankar Lal Damodar v. A Ajaipal*** **AIR 1946 Nag. 260**

Example:

A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)

A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A

for the same amount. Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)

(b) **Rescission [62]**:- Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1 st oct his go down and Y promises to pay for goods on 1 Nov. X does not supply the goods. Y may rescind the contract.

(c) **Alteration [62]** :- Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.

Ex:- X Promises to sell and delivers 100 bales of cotton on 1 oct. and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.

(d) **Remission [63]:**- Remission means accepting a lesser consideration than agreed in the contract.

No consideration is necessary for remission of the part of . Remission takes place when a Promisee-

(a) dispense with (wholly or part) the performance of a promise made to him.

(b) Extends the time for performance due by the promisors

(c) Accept a lesser sum instead of sum due under the contract

(d) Accept any other consideration that agreed in the contract

A promise to paint a pictured for B. B after words for him to do so. A is no longer bound to perform the promise.

(e) **Waiver**:- Intentional relinquishment of a right under the contract.

(f) **Merger** :- Conversion of an inferior right into a superior right is called as merger. (Inferior right end)

3. **Discharge by operation of law**

(a) **Death :-** involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent. Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.

(b) **Insolvency**:- when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.

Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.

(c) **By unauthorized material alteration** – without the approval of other party – comes to an end –nature of contract substance or legal effect.

Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.

(d) **Merger:** When an inferior right accruing to a party in a contract mergers into a superior right accruing to the same party, then the contract conferring inferior right is discharged.

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

(e) Rights and liabilities vest in the same person: Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.

Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

4. **Discharge by Lapse of time**

Where a party fails to take action against the other party within the time prescribe under the limitation

Act, 1963. All his rights to come end. Recover a debt – 3 Years recover an immovable property – 12 years

5. **Discharge by Breach of contract**

Failure of a party to perform his part of contract

(a) **Anticipatory Breach of contract** :- Anticipatory breach of contract occurs when the part declares his intention of not performing the contract before the performance is due .

(i) **Express repudiation**: - 5 agrees to supply B 100 tunes of specified category of iron on

15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron to B.

(ii) **Party disables himself**: - Implied by conduct.

Ex.:- A agrees to sell his fiat car to B on 15.01.2006 but on 31.12.2005 A sells his fiat car to T.

(b) **Actual Breach of contract** :- If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

During performance – party has performed a part of the contact.

Consequences of Breach of contract:- The aggrieved party (i.e. the party not at face it) is discharged from his obligation and get rights to proceed against the party at fault. The various remedial available to an aggrieved party.

6. **Discharge by Impossibility of Performance**

Section 56 of the Indian Contract Act, 1872 provide

AGREEMENT TO DO IMPOSSIBLE ACT – An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful – A contract to do an act which, after the

contract is made, becomes impossible, or, by reason of same event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

The Rule covers two legal maxims:-

1. *Lexicon cogit ad impossibilia* :- the law does not recognise what is impossible
2. *Impossibilium nulla obligato est*;- what is impossible does not create an obligation

It forms the basis of Doctrine of Frustration of Contract.

For an example: A agrees with B to discover treasure by magic. The agreement is void.

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

Performance of Contract

Sec 37:- That 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 contract Act, or of any other law.

Performance: - Two types

1. **Actual performance** – actually performed – liability of such a party comes to an end.

2. **Attempted performance or tender of performance** refusal to accept offer of performance by promisee .

Promisor is not responsible for non performance and they can sue the promisee for breach of contract – nor he (promisor) thereby lose his rights under the contract.

A. **Tender or offer of performance to be valid must satisfy the following conditions** (S.38):-

(i) It must be unconditional

Ex :- 'X' offers to 'Y' the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.

(ii) It must be made at a proper time and place.

Ex:- If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;

(iii) Reasonable opportunity to examine goods.

Ex:- Delivery of something to the promise by the promisor promise must have reasonable opportunity of inspection.

(iv) It must be for the whole obligation :- goods and amount.

Ex:- 'X' a debtor, offer's to pay 'Y' the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid [***Behari lal v Ram Gulam*** **(1902) ILR 24 All 461**]

(v) It must be made to the promisee or his duly authorized agent.

Ex:- It must be person who is willing to person his part of performance.

(vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

Type of Tender

- **Tender of goods and services**

When a promisor offers to delivery of goods or service to the promise, it is said to be tender of goods or services, if promisee does not accept a valid tender, It has the following effects:

(i) The promisor is not responsible for non – performance of the contract.

(ii) The promisor is discharged from his obligation under the contract. Therefore, he need not offer again.

(iii) He does not lose his right under the contract. Therefore, he can sue the promise.

- **Tender of money**

Tender of money is an offer to make payment. In case a valid tender of money is not accepted, it will have the following effects:

(i) The offeror is not discharged from his obligation to pay the amount.

(ii) The offeror is discharged from his liability for payment of interest from the date of the tender of money.

Effect of refusal of party to perform promise Wholly Sec 39.

Promisor – Refuse – Promise – wholly

Promisee can put can end of the contract or he can continue the contract if he has given his consent either by words or by conducts in its continuance.

Result – claim damages.

Who can demand performance?

1. **Promisee** – But stranger can't demand performance of the contract.

2. **Legal Representative** – legal representative can demand Exception performance.

- contrary intention appears from the contract

- contract is of a personal nature.

3. **Third party** – Exception to "stranger to a contract"

Person by whom promise is to be performed (**S. 40).**

[who will perform the contract]

- **Promisor himself** :- include personal skill, taste or art work.

Ex:- ‘A’ promises to paint a picture for ‘B’ as this promise involves personal skill of ‘A’. If must be performed by ‘A’.

- **Promisor or agent** :- does not involves personal skill
- **Legal Representative** :- does not involve personal skill and taste
- **Third person** [Sec 41] :- Acceptance of promise from the third party:-If the promisor accepts performance of a contract by a third party, he can’t after wards enforce the performance against the promisor although the promisor had neither authorized not ratified the act of the third party.

Performance of Joint Promises:-

- Two or more person make a promise
- Performed by all the joint promisor [S.42]
- All the joint promisor – liable

Thus in India the liability of joint promisors is joint as well as several.

In England, however the liability of the joint promisors is only joint and not several and accordingly all the joint promisors must be sued jointly.

Liability of joint promisor [S.43]

1. Liability ; joint as well as several [unless express A + B + C owes Rs 900 to D. D may compel either A, B or C or any of two of them or all of them.
2. Where a joint promisor has been compelled to perform the whole promise, be may compel every other joint promisor to contribute equally with himself to the performance of the promise (unless a contrary intention appears from the contract).

UNIT IV

Remedies for Breach of Contract

A valid contract gives rights to correlative rights and duties. Further as per famous Legal maxim *Ubi Jus Ibi Remedium* (where there is a right there is a remedy), so if a contract gives a right to a party in the contract that that right would be valueless if law does not provide remedy to enforce such right.

Remedy is the means given by the law for the enforcement of the right.

The remedies for breach of contract are:

1. Suit for damages or compensation
2. Suit for specific performance
3. Suit for injunction
4. Suit for rescission
5. Punitive damages

A. SUIT FOR DAMAGES OR COMPENSATION

The word 'damages' means monetary compensation for the loss suffered. Whenever a breach of contract takes place, the remedy of 'damages' is the one that comes to mind immediately as the consequence of breach. The aggrieved party may seek compensation from the party who breaches the contract.

Section 73 of the Indian Contract Act, 1872 lays down the basic guidelines for identifying the losses. Section 73 reads as follows: *"Compensation for loss or damage caused by breach of contract: When*

a contract has been broken, the party who suffers by such breach is entitled to receive, form the party who has broken the contract, compensation for any loss of damage caused to him thereby, which naturally arose in the usual course of things from such breach or which, the parties knew when they made the contract to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach."

Remoteness of Damages

As per section 73 (1)When a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him:

- Which naturally arose in the usual course of things from such breach, or
- Which the parties knew, when they made the contract, to be likely to result from the breach of the contract.

However if the damages do not fulfill above conditions than such damages comes under the category of remote damages (which can`t be anticipated by the parties at the time of framing of the contract or which are having very little connection to the fault done by the party to the contract)

In ***Hadley v. Baxaendale*** **(1854) 9 Ex 341.**the Plantiff`s mill had been stopped due to breakage of a crankshaft. The defendant, a firm of carriers, were engaged to carry the shaft to the manufacturers as a pattern for new one The plaintiff's servant informed Defendants that the mill was stopped and that the shaft must be sent immediately. But the Defendants delayed the delivery by some neglect, thus the mill remained stopped for a longer time than it would have been. An action

was brought for he loss of profits arising out of delay. **Held** breaching party is liable for all losses that the contracting parties should have foreseen, but is not liable for any losses that the breaching party could not have foreseen on the information available to him.

Types of Damages:-

1. **General or ordinary damages**. Damages arising naturally and directly out of the breach in the usual course of the things.
2. **Special damages**. Compensation for the special losses caused to the aggrieved party by the special circumstances attached to the contract.
3. **Exemplary damages**. Damages for the mental or emotional suffering also caused by the breach. In ***Ghaziabad Development Authority V Union of India*** **(AIR 2000 SC 2003),** the Hon'ble court held that in case of breach of contract mental anguish not a head of damages in ordinary commercial contract. In order to claim damages, party has to plead specifically the manner in which he suffered the loss. ***State V Pratibha Prakash Bhawan*** **AIR 2005 Ori 58**.
4. **Nominal Damages**. A court may award nominal damages as a legal remedy for breach of contract when the plaintiff cannot support their claim for compensatory damages. With nominal damages, the court recognizes that a breach of contract occurred, but no harm can be calculated. In ***Brace v. Calder*** **(1895) 2 Q.B. 253** A firm consisting of 4 partners employed C for a period of 2 years. After 6 months 2 partners retired, business being carried on by the other two. But C declined to be employed under the remaining two partners. Held that C was entitled to nominal damages as he had not suffered any loss.

LIQUIDATED DAMAGES AND PENALTY

Where the contract itself addresses the issue of consequences of a breach and stipulated a penalty, section 74 of the Indian Contract Act will come into play. When such a contract has been

broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, to receive from the party who has broken the contract a reasonable compensation not exceeding the amount so named.

The sum stipulated is penalty if :

a) It is extravagant or unconscionable (unreasonable) in amount compared with the greatest loss which could conceivably be proved to have followed from the breach
b) The breach consists of not paying a sum of money by a certain time, and the sum fixed a greater than the sum to be paid.

   Eg. A agrees to pay B Rs.2000 on 10 Jan, and if he fails to pay at stipulated time he has to pay Rs 2,500 to B. Thus, Rs 500 is a penalty.

Liquidated Damages	**Penalty**
Liquidated damages are compensatory in nature at the same time are pre-estimated damages. The purpose liquidated damages is to promote certainty especially in commercial field.	Penalty is something which is used in a contract to secure the performance of the contract whose main purpose is to ensure the payment of money which is specified to terrorise the offending party. Also where the loss which has to be recovered is greater than the pre-estimated loss then it amounts to penalty.
Liquidated damages are based on the genuine pre-estimate of the loss	Penalty is based on the doctrine of reasonable compensation.

It is court's duty to determine whether the case in hand involves liquidated damages or penalty, by determining the facts of the case. Apart from it the court has to look into

- Nature of transaction,

- Right and other obligation arising from the contract and the transaction
- And relative situation of the parties.

In ***Fateh Chand v Bal Krishan Das*** **AIR 1963 SC 1405** the Supreme Court mainly eliminated the refinement under English Law in relation to the difference between the payment of liquidated damages and stipulation of penalty. The S.C in this case stated that the aggrieved party is entitled to a reasonable compensation which should not exceed the sum of penalty or the pre-determined amount which have to be paid after the breach of contract. The court also stated that the application of these provisions is not confined to the cases where the aggrieved party approaches the court only for relief.

B. Specific Performance

According to Section 10 of the Specific Relief Act, 1963, there are seven cases when specific performance of a contract may be allowed by the Court. They are:

When there is no standard for ascertaining actual damage

When it is impossible to quantify the actual damage caused by the non-performance of the act agreed to be done, the Court may, in its discretion, grant a decree of Specific Performance of that act.

Duke of Somerset v. Cookson, 1935, 3 P Wins. 390

Art, paintings, old furniture, antiques, etc. have a special value to the contracting party, although such articles may not have much monetary value. For example, an idol which has been passed down from generation to generation of a family has immense value to that family, even if it means nothing to someone else. No amount of damages can compensate for the loss to the members of the family, even if the Court makes an attempt to assess the damages payable instead of the idol. Therefore, an order will be passed for specific delivery of that idol, not for damages.

In ***Vijaya Minerals v. Bikash*** **AIR 1996 Cal. 67**, the Hon'ble Calcutta High Court has observed that since manganese and iron ore are not ordinary items of commerce, if a contract for sale of iron and manganese ore from a mine has been made, specific performance of such an act would be allowed.

When monetary compensation would not afford adequate relief

When the act agreed to be done is such that compensation offered in money for its non-performance would not afford adequate relief. However, until the contrary is proved, it is to be presumed that:

1. The breach of a contract to transfer immovable property cannot be adequately compensated by payment of money.
2. The breach of a contract to transfer movable property can be so compensated, except in the following cases:

a. Where the property is not an ordinary article of commerce or is of special value or interest to the plaintiff, or consists of goods which are not easily obtainable in the market;
b. Where the property is held by the defendant as the agent or trustee of the plaintiff.

Usually, the Courts are entitled to presume that in case of breach of contract to transfer of immovable property, mere compensation is not adequate relief, whereas specific performance is adequate relief, whereas in the case of movable property, compensation is the ordinary relief and specific performance is exceptional. However, it must be noted that these presumptions are rebuttable.

In ***Bank of India v. Chinoy*****, AIR 1949 PC 90,** it was held that if shares are freely available in the market, then specific performance would not be granted. If shares of a particular company, for instance a private company are not readily available in the market, specific performance would be granted.

Suits for enforcement of a contract to execute a mortgage

In a suit for the enforcement of a contract to execute a mortgage or furnish any other security for the repayment of any loan which the borrower is not willing to pay at once, specific performance may be allowed. However, where only part of the loan has been advanced by the lender, he must be willing to advance the full amount of the loan.

Contracts for the purchase of any debentures of a company.
Suits for the execution of a formal deed of partnership.
Suits for the purchase of partner’s share.

Suits for the enforcement of a building construction contract or any other work on land, provided the following 3 conditions are fulfilled:

1. The building or other work has been described in the contract in a reasonably precise manner, so as to enable to Court to decide the exact nature of building or work;
2. The plaintiff has substantial interest in the performance of the contract, and the interest is such that financial compensation for non-performance of the contract would not be adequate relief; and
3. After the contract, the defendant has obtained possession of the whole or any part of the land in question.

It is important to remember that specific performance is an equitable remedy, and is therefore left to the discretion of the Court, rather than to the right of a person by law.

C. Injunction

Under Section 36 of Specific Relief Act 1963, an injunction is defined as an order of a competent court, which:

1. Forbids the commission of a threatened wrong,
2. Forbids the continuation of a wrong already begun, or
3. Commands the restoration of status quo (the former course of things).

Clauses i and ii deal with preventive relief, whereas clause iii deals with an injunction called mandatory injunction, which aims at rectifying, rather than preventing the defendant's misconduct.

Under Sections 36 & 37 of the Specific Relief Act 1963, there are two types of injunctions – temporary and perpetual, whereas Section 39 governs mandatory injunctions.

Temporary or interim injunctions are governed by Order 39 of Civil Procedure Code 1908 and are those injunctions that remain in force until a specified period of time, e.g. 15 days, or till the date of the next hearing. Such injunctions can be granted at any stage of the suit.

Permanent or perpetual injunctions, as under Sections 38 to 42 of the Specific Relief Act, 1963 are contained in the decree passed by the Court after fully hearing the merits of the case. Such an injunction permanently prohibits the defendant from committing an act which would be contrary to the plaintiff's rights.

When are perpetual injunctions being granted?

Under Section 38 of the Specific Relief Act 1963, whenever the defendant invades, or even threatens to invade the plaintiff's right to enjoyment of property or right to property itself, the Court may grant to the plaintiff a perpetual or permanent injunction in the four cases as follows:

1. Where there is no standard for quantifying the actual damages caused, or likely to be caused, to the plaintiff, by the invasion of his rights;
2. Where invasion of the plaintiff's rights is such that any compensation in money would be inadequate relief;
3. Where the defendant is a trustee of the property for the plaintiff;
4. Where the injunction is necessary to prevent multiplicity of judicial proceedings.

Mandatory injunctions are granted in cases where in order to prevent the non-performance of an obligation, it is necessary to compel the performance of certain acts which the Courts are capable of enforcing. Thus, the Court may at its discretion grant an injunction to prevent such non-performance and also to compel performance of the required acts. This injunction is applicable to the breach of any obligation. It may be permanent or temporary, although temporary-mandatory injunctions are rare.

D. Suit for Rescission

Rescission allows a non-breaching party to cancel the contract as a remedy for a breach. Rather than seeking monetary damages, the non-breaching party can simply refuse to complete their end of the bargain. According to section 75, the party who rescinds has the right to receive damages or compensation for that. Rescission puts the parties back in the position they would have been in had they never entered into the contract.
For example**,** A promises B to buy his goods on 3rd January at the price of 3000, but B failed to deliver the goods on the specified date. Now, A has the right to cancel the contract because B has not fulfilled his obligation.

However, to justify rescission, the breach must be material. That means that it has to go to the heart of the contractual agreement.
For example, imagine that you contract to provide catering services for an event. The contract requires the other party to pay half the contract price by a certain date, but they never pay. Since payment goes to the heart of the contract, you would be justified in rescinding the contract and refusing to provide the catering services.

E. PUNITIVE DAMAGES

Punitive damages are damages intended to reform or deter the defendant. Although the purpose of punitive damages is not to compensate the plaintiff, the plaintiff will in fact receive all or some portion of the punitive damage award. Punitive damages are damages over and above such sums as will compensate a person for his actual loss.

“ Punitive, ” “ vindictive, ” and “ exemplary ” damages are all synonymous terms.
Punitive damages are only permissible, when “ the illegal act for which redress is sought is not only tortious, but is dictated by malice or evil intent, or is attended with circumstances of intentional oppression, insult, or outrage. ”

These are those damages which may be awarded in actions of tort founded on the malicious or wanton misconduct of the defendant, or upon such neglect as is equivalent to malicious or wanton misconduct.

Exemplary or punitive damages, being awarded not by way of compensation to the sufferer, but by way of punishment to the offender and as a warning to others, can be awarded only against one who has participated in the offence.
Punitive damage are often awarded where compensatory damages are deemed an inadequate remedy. The court may impose them to prevent under-compensation of plaintiffs, to allow redress of undetectable torts and taking some strain away from the criminal justice system
In ***Whiten v Pilot Insurance Company*** **[2002] 5 LRC 296** the Appellant`s got their house insured by the Defendant and the same got destroyed in fire. The appellant was able to rent a small winterised cottage nearby for $650 per month. The respondent, Pilot Insurance Company, made a single $5,000 payment for living expenses and covered the rent for a couple of months

before cutting it off without telling the family and thereafter pursued a hostile and confrontational policy. This led to a protracted trial based on the respondent's allegation of arson.

However, the allegation was contradicted by the local fire chief, the respondent's own expert investigator and its initial expert, all of whom said there was no evidence to substantiate the claim. The respondent's position was discredited at trial and its appellate counsel conceded that their was no air of reality to the allegation.

The jury awarded compensatory damages of $318,252.32 and $1 million in punitive damages. A majority in the Court of Appeal allowed the appeal in part and reduced the award of punitive damages to $100,000. The appellant appealed to the Supreme Court against the reduction of punitive damages and the respondent cross-appealed against the award of any punitive damages. Court held that "*Punitive damages were available in the absence of an accompanying tort and might be awarded in the exceptional case in contract, provided that an 'actionable wrong' had been committed in addition to the contractual breach. A breach of the contractual duty of good faith was an 'actionable wrong' independent of, and in addition to, the breach of contractual duty to pay the loss. (2) Punitive damages were not at large: they were awarded against a defendant in exceptional cases for malicious, oppressive and high-handed misconduct that offended the court's sense of decency.*"

QUASI CONTRACT

There are certain situations wherein certain persons are required to perform an obligation despite the fact that he hasn't broken any contract nor committed any tort. For instance, a person is obligated to restore the goods left at his home, by mistake, and keep it in good condition. Such obligations are called quasi contracts.

The term **" quasi-contract, "** is sometimes applied both to cases of a true contract, where an actual agreement is inferred from the conduct of the parties, although no agreement is expressed, and sometimes to cases where there being in fact no agreement at all, the plaintiff is permitted to use the form of an action of contract in order to recover against the defendant. It is properly applicable to the latter class of cases only.

In contracts it is the consent of the contracting parties which produces the obligation. In quasi-contracts there is not any consent. The law alone, or natural equity, produces the obligation by rendering obligatory the fact from which it results. Therefore these facts are called " quasi-contracts, " because without being contracts, they produce obligations; in the same manner as actual contracts.

Rationale behind the Concept

The rationale behind "quasi-contract" is based on the theory of Unjust Enrichment i.e. enrichment at the cost of another. Lord Mansfield is considered to be the founder of this theory.

In Indian context, the quasi-contracts are put under chapter V of the Indian Contract Act as " OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACTS". The framers avoided the direct term "quasi-contract" in order to avoid the theoretical confusion regarding the same.

Sections 68 to 72 provide for five kinds of quasi-contractual obligations:

1. Supply of necessities [s.68]
2. Payment by interested persons [s.69]
3. Liability to pay for non-gratuitous acts [s.70]
4. Finder of goods [s.71]
5. Mistake or coercion [s.72]

1. Supply of necessities [S.68]

When necessities are supplied to a person who is incompetent of contract or to someone who is legally bound to support, the supplier is entitled to recover the price from the property of the incompetent person. "incompetency to contract", here, would mean parties that are not competent to contract as per sec. 10 of the Act, i.e., in following circumstances:

1. Minors
2. Persons of unsound mind
3. Persons disqualified by law to which they are subject

2. Payments by interested persons [S.69]

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

The following conditions must be fulfilled for application of the section:-

1.The plaintiff must be interested in making the payment. The interest which the plaintiff seeks to protect must be legally recognizable;

2. It is necessary that the plaintiff himself should not be bound to pay. He should be interested in making the payment in order to protect his own interest;

3. The defendant should have been "bound by law" to pay the money;

4. The plaintiff should have made the payment to another person and not to himself.

Eg. The goods belonging to A were wrongfully attached in order to realise the arrears of Government revenue due by G. A paid the amount to save the goods from sale. Held, A was entitled to recover the amount from G ***Abid Hussain v. Ganga Sahai*** **(1928) 26 All. L.J. 435**

3. Liability for non-gratuitous act [S.70]

S.70 creates liability to pay for the benefit of an act which the doer did not intend to do gratuitously.

Where a person does something for another person not intending to do so gratuitously and such person is entitled to enjoy benefits from it. And then such a person who has used the thing has to compensate the other or restore or deliver the thing.

For example, A, a tradesman, leaves goods at B's house by mistake. B, treats the goods as his own. He is bound to pay A for them. Conditions of liability under this section are as follows:

1. One of the purposes of the section is to assure payment to a person who has done something for another voluntarily and yet with the thought of being paid.
2. The person for whom the act is being done is not bound to pay unless he had the choice to reject the services.
3. It is necessary that the services should have been rendered without any request.
4. Services should have been rendered lawfully.
5. The person rendering services should not have intended to act gratuitously.

A village was irrigated by tank. The Government effected certain repairs to the tank for its preservation and had no intention to do so gratuitously for the zamindars. The zamindars enjoyed the benefit. Held, zamindars were liable to contribute ***Damodar Mudaliar v. Secretary of State for India*** **(1894) 18 Mad. 88**

4 Finder of goods [S.71]

Section 71 lays down the responsibility of a finder of goods. The duties and liability of a finder is treated at par with the bailee. The finder's position, therefore, has been considered along with

bailment. The finder of the goods can sell the goods in the following cases:-

- When the goods so found are perishable in nature
- When the owner cannot, with reasonable delligence be found
- When the owner is found out, but he refuses to pay the lawful charges of the finder and
- When the lawful charges of the finder, in respect of the thing found, amounts to two-third of the value of the thing found. (S.169)

Following are certain duties of the Finder of the Goods

A Duty take reasonable care

According to Section 151 of the Act, the finder of the goods has the duty to take care of the goods in the manner he would taken care of the goods if they belonged to him. So the acquirer of the goods is required to take reasonable care of the goods of the owner as he would have taken care of the goods under the similar circumstances.

B. Duty not to make unauthorised use

Section 154 of the Act says that the bailee should not use the goods in an unauthorised manner. If he makes the unauthorised use of goods then he will liable for the same and has to provide compensation to the owner or the bailor for such unauthorised use.

C Duty to return the goods

The finder of the goods has the duty to return the property possessed by him to it its true owner as per Section 160 of the Act. But he can exercise his right of lien if the compensation or lawful charges are not paid to the acquirer by the owner of the goods.

D Duty to return the increase

Section 163 of the Act says that if any profit is earned by the finder of the goods on the property that belonged to the owner,

then it is the duty of the acquirer to return such profit to the owner of the goods.

Nature of lien that the finder has over the goods

The finder of the goods has the power to retain the goods if the lawful charges for the maintenance are not given to the acquirer by the owner.

In ***K. Sardambal v. Jagannathan and Brothers (*****1972) 42 Comp Cas 359 Mad** the Court held that the finder of the goods only has the right to retain the goods until payment and does not carry with it a right of sale to secure the amount. He is also entitled to exercise the right of lien notwithstanding that he is in possession of the goods as agent or bailee for the buyer.

5 Mistake or coercion [S. 72]

Section 72 states that payments or delivery made under mistake or coercion must be made good or be returned.