

# Business Laws

## The Indian Contract Act, 1872



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## CHAPTER-1

# THE INDIAN CONTRACT ACT, 1872

## INTRODUCTION

- Indian Contract Act received its assent on 25th April, 1872.
- Indian Contract Act came into force on 1st September, 1872.
- It is applicable to whole of India except Jammu and Kashmir.
- It is considered to be not complete and not exhaustive in nature.
- It creates "Jus In Personam". It means right against a particular person.

## THEORY QUESTIONS

**Q-1** What is a Contract ? State the Essential Elements of a Valid Contract?

**Ans.** The term contract is defined under section 2(h) of the Indian Contract Act, 1872 as-  
**"an agreement enforceable by law".**

The contract consists of two essential elements:

- an agreement and
- its enforceability by law.

Contract = Accepted proposal/Agreement + Enforceability by law

In terms of Section 10 of the Act, "all agreements are contracts if they are made by the free consent of the parties competent to contract, for a lawful consideration and with a lawful object and are not expressly declared to be void".

### Essential Elements Of A Valid Contract

- Two Parties:** One cannot contract with himself. A contract involves at least two parties- one party making the offer and the other party accepting it. A contract may be made by natural persons and by other persons having legal existence e.g. companies, universities etc.
- Parties must intend to create legal obligations:** There must be an intention on the part of the parties to create legal relationship between them. Social or domestic type of agreements are not enforceable in court of law and hence they do not result into contracts.

**Case Law :** (Balfour v. Balfour)

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

3. **Other Formalities to be complied with in certain cases:** In case of certain contracts, the contracts must be in writing, e.g. Contract of Insurance is not valid except as a written contract.
4. **Certainty of meaning:** The agreement must be certain and not vague or indefinite.
5. **Possibility of performance of an agreement:** The terms of agreement should be capable of performance. An agreement to do an act impossible in itself cannot be enforced.
6. **Offer and Acceptance :** An agreement is the first essential element of a valid contract. According to Section 2(e) of the Indian Contract Act, 1872, "Every promise and every set of promises, forming consideration for each other, is an agreement" and according to Section 2(b) "A proposal when accepted, becomes a promise". An agreement is an outcome of offer and acceptance.  
**Free Consent:** Two or more persons are said to consent when they agree upon the same thing in the same sense. This can also be understood as identity of minds in understanding the terms viz consensus ad idem. Further such a consent must be free. Consent would be considered as free consent if it is not caused by coercion, undue influence, fraud or, misrepresentation or mistake.
8. **Capacity of Parties:** Capacity to contract means the legal ability of a person to enter into a valid contract. Section 11 of the Indian Contract Act specifies that every person is competent to contract who
  - (a) is of the age of majority according to the law to which he is subject and
  - (b) is of sound mind and
  - (c) is not otherwise disqualified from contracting by any law to which he is subject.
9. **Lawful Consideration and Object:** The consideration and object of the agreement must be lawful.
10. **Not expressly declared to be void:** The agreement entered into must not be which the law declares to be either illegal or void. An illegal agreement is an agreement expressly or impliedly prohibited by law. A void agreement is one without any legal effects.

**Q-2 State the Types Of Contract?**

**Ans.** As per The Indian Contract Act 1872 contracts are classified on the following basis:

I. **On the basis of the Validity**

1. **Valid Contract:** An agreement which is binding and enforceable is a valid contract. It contains all the essential elements of a valid contract.
2. **Void Contract:** Section 2 (j) states as follows: "A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable". Thus a void contract is one which cannot be enforced by a court of law.
3. **Voidable Contract:** Section 2(i) defines that "an agreement which is enforceable by law at the option of one or more parties thereto, but not at the option of the other or others is a voidable contract".  
This in fact means where one of the parties to the agreement is in a position or is legally entitled or authorized to avoid performing his part, then the agreement is treated and becomes voidable.
4. **Illegal Contract :** It is a contract which the law forbids to be made. The court will not enforce such a contract but also the connected contracts. All illegal agreements are void but all void agreements are not necessarily illegal.
5. **Unenforceable Contract:** Where a contract is good in substance but because of some technical defect i.e. absence in writing, barred by limitation etc. one or both the parties cannot sue upon it, it is described as an unenforceable contract

**II. On the basis of the Formation**

1. **Express Contracts:** A contract would be an express contract if the terms are expressed by words spoken or in writing. Any promise is made in words the promise is said to be express.
2. **Implied Contracts:** Implied contracts in contrast come into existence by implication. Most often the implication is by law and or by action. Any promise is made otherwise than in words the promise is said to be implied.
3. **Tacit Contracts:** The word Tacit means silent. Tacit contracts are those that are inferred through the conduct of parties without any words spoken or written.

A classic example of tacit contract would be when cash is withdrawn by a customer of a bank from the automatic teller machine [ATM]. Another example of tacit contract is where a contract is assumed to have been entered when a sale is given effect to at the fall of hammer in an auction sale.

4. **Quasi-Contract:** A quasi-contract is not an actual contract but it resembles a contract. It is created by law under certain circumstances.
5. **E-Contracts:** When a contract is entered into by two or more parties using electronics means, such as e-mails is known as e-commerce contracts.

**III. On the basis of the Performance**

1. **Executed Contract:** The consideration in a given contract could be an act or forbearance. When the act is done or executed or the forbearance is brought on record, then the contract is an executed contract.
2. **Executory Contract:** In an executory contract the consideration is reciprocal promise or obligation. Such consideration is to be performed in future only and therefore these contracts are described as executory contracts.
3. **Unilateral Contract:** Unilateral contract is a one sided contract in which one party has performed his duty or obligation and the other party's obligation is outstanding.
4. **Bilateral Contract:** A Bilateral contract is one where the obligation or promise is outstanding on the part of both the parties.

**Q-3 State the Difference between Void and Voidable Contract ?**

**Ans.**

S.No.	Basis	Void Contract	Voidable Contract
1	Meaning	A Contract ceases to be enforceable by law becomes void when it ceases to be enforceable.	An agreement which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is a voidable contract.
2	Cause	A contract becomes void due to change in law or change in circumstances beyond the contemplation of parties.	A contract becomes a voidable contract if the consent of a party was not free.

3	Performance of contract	A void contract cannot be performed	If the aggrieved party does not, within reasonable time, exercise his right to avoid the contract, any party can sue the other for claiming the performance of the contract.
4	Rights	A void contract does not grant any right to any party.	The party whose consent was not free has the right to rescind the contract

**Q-4 State the Difference between Void and Illegal Agreement ?**

**Ans.**

Sr. No.	Basis of difference	Void agreement	Illegal agreement
1	Scope	A void agreement is not necessarily illegal.	An illegal agreement is always void.
2	Nature	Not forbidden under law.	Are forbidden under law.
3	Punishment	Parties are not liable for any punishment under the law.	Parties to illegal agreements are liable for punishment.
4	Collateral Agreement	It's not necessary that agreements collateral to void agreements may also be void. It may be valid also.	Agreements collateral to illegal agreements are always void.

**Q-5 Define An Offer . State the types of an offer . Also explain the Essentials of A Valid Offer ?**

**Ans. Definition of Offer/Proposal :**

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

**Types Of Offer**

**(a) General offer:** It is an offer made to public at large and hence anyone can accept and do the desired act

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

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

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

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

- (d) **Counter offer:** When the offeree offers to qualified acceptance of the offer subject to modifications and variations in the terms of original offer, he is said to have made a counter offer. Counter-offer amounts to rejection of the original offer. It is also called as Conditional Acceptance.
- (e) **Standing or continuing or open offer:** An offer which is allowed to remain open for acceptance over a period of time is known as standing or continuing or open offer. Tenders that are invited for supply of goods is a kind of standing offer.

**Essential of a valid offer**

1. **It must be capable of creating legal relations:** Offer must be such as in law is capable of being accepted and giving rise to legal relationship.
2. **It must be certain, definite and not vague:** If the terms of an offer are vague or indefinite, its acceptance cannot create any contractual relationship.
3. **It must be communicated to the offeree:** An offer, to be complete, must be communicated to the person to whom it is made, otherwise there can be no acceptance of it. An acceptance of an offer, in ignorance of the offer, is not acceptance and does not confer any right on the acceptor.

**Case Law:** Lalman Shukla v. GauriDutt

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

4. **It must be made with a view to obtaining the assent of the other party:** Offer must be made with a view to obtaining the assent of the other party addressed and not merely with a view to disclosing the intention of making an offer.
5. **It may be conditional:** An offer can be made subject to any terms and conditions by the offeror.
6. **Offer should not contain a term the non compliance of which would amount to acceptance:** Thus, one cannot say that if acceptance is not communicated by a certain time the offer would be considered as accepted.
7. **Offer may be express or implied:** An offer may be made either by words or by conduct.
8. **An offer should be distinguished from an invitation to offer.** An offer is definite and capable of converting an intention into a contract. Whereas an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. An invitation to offer is an act precedent to making an offer.

**Q-6 State the difference between an Offer and an Invitation to an Offer ?**

**Ans.** Difference between offer and invitation to make an offer:

- In terms of Section 2(a) of the Act, an offer is the final expression of willingness by the offeror to be bound by the offer should the other party chooses to accept it.
- On the other hand, offers made with the intention to negotiate or offers to receive offers are known as invitation to offer.
- Thus where a party without expressing his final willingness proposes certain terms on which he is willing to negotiate he does not make an offer, but only invites the other party to make an offer on those terms.
- Hence the only thing that is required is the willingness of the offeree to abide by the terms of offer. If a person who makes the statement has the intention to be bound by it as soon as the other accepts, he is making an offer.

- Thus the intention to be bound is important factor to be considered in deciding whether a statement is an 'offer' or 'invitation to offer.'
- Following are instances of invitation to offer to buy or sell:
  - (i) An invitation by a company to the public to subscribe for its shares.
  - (ii) Display of goods for sale in shop windows.
  - (iii) Advertising auction sales and
  - (iv) Quotation of prices sent in reply to a query regarding price.

**Q-7 Define An Acceptance. State the Theory of Anson. Also explain the Essentials of A Valid Acceptance?**

**Ans. Definition of Acceptance:**

In terms of Section 2(b) of the Act, 'the term acceptance' is defined as follows:

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

**Theory Of Anson:**

Relationship between offer and acceptance:

- According to Sir William Anson "Acceptance is to offer what a lighted match is to a train of gun powder".
- The effect of this observation is that what acceptance triggers cannot be recalled or undone. But there is a choice to the person who had the train to remove it before the match is applied.
- It in effect means that the offer can be withdrawn just before it is accepted. Acceptance converts the offer into a promise and then it is too late to revoke it.
- This means as soon as the train of gun powder is lighted it would explode.
- Train of Gun powder [offer] in itself is inert, but it is the lighted match [the acceptance] which causes the gun powder to explode.
- The significance of this is an offer in itself cannot create any legal relationship but it is the acceptance by the offeree which creates a legal relationship.
- Once an offer is accepted it becomes a promise and cannot be withdrawn or revoked. An offer remains an offer so long as it is not accepted but becomes a contract as soon as it is accepted.

**Legal Rules regarding a valid acceptance**

- (1) **Acceptance can be given only by the person to whom offer is made:** In case of a specific offer, it can be accepted only by the person to whom it is made.
- (2) **Acceptance must be absolute and unqualified:** Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract.
- (3) **The acceptance must be communicated:** To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance.
- (4) **Acceptance must be in the prescribed mode:** Where the mode of acceptance is prescribed in the proposal, it must be accepted in that manner.

- (5) **Time:** Acceptance must be given within the specified time limit, if any, and if no time is stipulated, acceptance must be given within the reasonable time and before the offer lapses.
- (6) **Mere silence is not acceptance:** The acceptance of an offer cannot be implied from the silence of the offeree or his failure to answer, unless the offeree has in any previous conduct indicated that his silence is the evidence of acceptance.

**Q-8 Explain the Rules regarding communication and revocation of offer and acceptance ?**

**Ans.** The Indian Contract Act, 1872 gives a lot of importance to “time” element in deciding when the offer and acceptance is complete.

**Communication of offer:** In terms of Section 4 of the Act, “the communication of offer is complete when it comes to the knowledge of the person to whom it is made”. This can be explained by an example. Where ‘A’ makes a proposal to ‘B’ by post to sell his house for ` 5 lakhs and if the letter containing the offer is posted on 10th March and if that letter reaches ‘B’ on 12th March the offer is said to have been communicated on 12th March when B received the letter.

**Communication of acceptance:** Communication of acceptance is complete

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

**Acceptance over telephone or telex or fax:** When an offer is made of instantaneous communication like telex, telephone, fax or through e-mail, the contract is only complete when the acceptance is received by the offeree, and the contract is made at the place where the acceptance is received (Entores Ltd. v. Miles Far East Corporation). However, in case of a call drops and disturbances in the line, there may not be a valid contract.

**Revocation**

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

- (i) as against the person who makes it when it is put into a course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and
- (ii) as against the person to whom it is made, when it comes to his knowledge.

**Q-9 How can An Offer Lapse? State the ways of lapse of an offer?**

**Ans. Modes of revocation of offer**

- (i) By Notice of Revocation
- (ii) By Rejection of offer
- (iii) By Lapse of Time: The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time.
- (iv) By Non fulfillment of condition precedent: Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked.
- (v) By Death or Insanity: Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.
- (vi) By Counter offer
- (vii) By Cross offer
- (viii) By the non acceptance of the offer according to the prescribed or usual Mode
- (ix) By subsequent illegality

**Q-10 What is Consideration? State the Essentials of a Valid Consideration?**

**Ans.** Section 2(d) defines consideration as follows:

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

**Essentials Of A Valid Consideration**

- (i) **Consideration must move at the desire of the promisor:** Consideration must be offered by the promisee or the third party at the desire or request of the promisor. An act done at the desire of a third party is not a consideration.
- (ii) **Consideration may move from promisee or any other person:** In India, consideration may proceed from the promisee or any other person who is not a party to the contract. In other words, there can be a stranger to a consideration but not stranger to a contract.

**Case Law :** [Chinnayya vs. Ramayya (1882)]

An old lady made a gift of her property to her daughter with a direction to pay a certain sum of money to the maternal uncle by way of annuity. On the same day, the daughter executed a writing in favour of the brother agreeing to pay annuity. The daughter did not, however, pay the annuity and the uncle sued to recover it. It was held that there was sufficient consideration for the uncle to recover the money from the daughter

- (iii) **Executed and executory consideration:** A consideration which consists in the performance of an act is said to be executed. When it consists in a promise, it is said to be executory. The promise by one party may be the consideration for an act by some other party, and vice versa.
- (iv) **Consideration may be past, present or future:** The words "has done or abstained from doing" [as contained in Section 2(d)] are a recognition of the doctrine of past consideration. In order to support a promise, a past consideration must move by a previous request.
- (v) **Consideration need not be adequate:** Consideration need not to be of any particular value. It need not be approximately of equal value with the promise for which it is exchanged but it must be something which the law would regard as having some value. Something in return need not be equal to something given. It can be considered a bad bargain of the party.  
But as an exception if it is shockingly less and the other party alleges that his consent was not free than this inadequate consideration can be taken as an evidence in support of this allegation
- (vi) **Performance of what one is legally bound to perform:** (consideration must not be performance of existing duty) The performance of an act by a person who is legally bound to perform the same cannot be consideration for a contract. Hence, a promise to pay money to a witness is void, for it is without consideration
- (vii) **Consideration must be real and not illusory:** Consideration must be real and must not be illusory. It must be something to which the law attaches some value. If it is legally or physically impossible it is not considered valid consideration.
- (viii) **Consideration must not be unlawful, immoral, or opposed to public policy.** Only presence of consideration is not sufficient it must be lawful. Anything which is immoral or opposed to public policy also cannot be valued as valid consideration.

**Q-11 A Contract without Consideration is Void. State the Exceptions.**

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

1. **Natural Love and Affection:** Conditions to be fulfilled are as under:
  - (i) It must be made out of natural love and affection between the parties.
  - (ii) Parties must stand in near relationship to each other.
  - (iii) It must be in writing.
  - (iv) It must also be registered under the law.
2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable. In order that a promise to pay for the past voluntary services be binding, the following essential factors must exist.
  - (i) The services should have been rendered voluntarily.
  - (ii) The services must have been rendered for the promisor.]
  - (iii) The promisor must be in existence at the time when services were rendered.
  - (iv) The promisor must have intended to compensate the promisee
3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorised agent, is made to pay a debt barred by limitation it is valid without consideration.
4. **Agency:** No consideration is necessary to create an agency. It means an agency done for free will create a valid contract.
5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply.
6. **Bailment:** No consideration is required to effect the contract of bailment (Section 148).
7. **Charity:** If a promisee undertakes the liability on the promise of the person to contribute to charity, there the contract shall be valid.

**Q-12 Explain the Rule of Privity of Contract. Also state the situations in which this Rule does not apply?**

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

- (1) **In the case of trust,** a beneficiary can enforce his right under the trust, though he was not a party to the contract between the settler and the trustee.
- (2) **In the case of a family settlement,** if the terms of the settlement are reduced into writing, the members of family who originally had not been parties to the settlement may enforce the agreement.
- (3) **In the case of certain marriage contracts,** a female member can enforce a provision for marriage expenses made on the partition of the Hindu Undivided Family.
- (4) **In the case of assignment of a contract,** when the benefit under a contract has been assigned, the assignee can enforce the contract.
- (5) **Acknowledgement or estoppel** – where the promisor by his conduct acknowledges himself as an agent of the third party, it would result into a binding obligation towards third party.
- (6) **Contracts entered into through an agent:** The principal can enforce the contracts entered by his agent where the agent has acted within the scope of his authority and in the name of the principal.

**Q-13 What is the position of minor as per Indian Contract Act, 1872?**

**Ans.** **Age of Majority:** In India, the age of majority is regulated by the Indian Majority Act, 1875.

Every person domiciled in India shall attain the age of majority on the completion of 18 years of age and not before.

**Law relating to Minor's agreement/Position of Minor**

1. **A contract made with or by a minor is void ab-initio:** A minor is not competent to contract and any agreement with or by a minor is void from the very beginning.  
**Case Law:** Mohiri Bibi vs. DharmoDas Ghosh "A, a minor borrowed ` 20,000 from B and as a security for the same executed a mortgage in his favour. He became a major a few months later and led a suit for the declaration that the mortgage executed by him during his minority was void and should be cancelled. It was held that a mortgage by a minor was void and B was not entitled to repayment of money.
2. **No ratification after attaining majority:** A minor cannot ratify the agreement on attaining majority as the original agreement is void ab initio and a void agreement can never be ratified.
3. **Minor can be a beneficiary:** Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor. Thus, A minor cannot become partner in a partnership firm. However, he may with the consent of all the partners, be admitted to the benefits of partnership.
4. **A minor can always plead minority:** A minor can always plead minority and is not stopped to do so even where he has taken any loan or entered into any contract by falsely representing that he was major. Rule of estoppel cannot be applied against a minor. It means he can be allowed to plea his minority in defence.
5. **Liability for necessities:** A claim for necessities supplied to a minor is enforceable by law. But there is no personal liability of the minor, but only his property is liable.  
To render minor's estate liable for necessities two conditions must be satisfied.
  - (i) The contract must be for the goods reasonably necessary for his support in the station in life.
  - (ii) The minor must not have already a sufficient supply of these necessities.
6. **Contract by guardian - how far enforceable:** Though a minor's agreement is void, his guardian can, under certain circumstances enter into a valid contract on minor's behalf. Where the guardian makes a contract for the minor, which is within his competence and which is for the benefit of the minor, there will be valid contract which the minor can enforce.
7. **No specific performance:** A minor's agreement being absolutely void, there can be no question of the specific performance of such an agreement.
8. **No insolvency:** A minor cannot be declared insolvent as he is incapable of contracting debts and dues are payable from the personal properties of minor and he is not personally liable.
9. **Minor can be an agent:** A minor can act as an agent. But he will not be liable to his principal for his acts. A minor can draw, deliver and endorse negotiable instruments without himself being liable.
10. **Liability for torts:** A tort is a civil wrong. A minor is liable in tort unless the tort in reality is a breach of contract

**Q-14 What do we understand by Free Consent. Also state the situations when consent of party is not free?**

**Ans.** As per the provisions of Indian Contract Act, 1872 "two or more persons are said to consent when they agree upon the same thing in the same sense." Consent is said to be free when it is not caused by:

1. Coercion
2. Undue Influence
3. Fraud
4. Misrepresentation

5. Mistake.

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

**(I) Coercion (Section 15)**

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

**(II) Undue influence (Section 16)**

“A contract is said to be induced by ‘undue influence’ where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and he uses that position to obtain an unfair advantage over the other”.

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

- (a) Where he holds a real or apparent authority over the other; or
- (b) Where he stands in a fiduciary relationship to the other; or
- (c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress for example, an old illiterate person.

**(III) Fraud (Section 17)**

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

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

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

- (1) He can rescind the contract within a reasonable time.
- (2) He can sue for damages.
- (3) He can insist on the performance of the contract on the condition that he shall be put in the position in which he would have been had the representation made been true.

**Mere silence is not fraud**

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

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

**(IV) Misrepresentation (Section 18)**

Misrepresentation means and includes -

- (1) 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;
- (2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him; by misleading another to his prejudice or to the prejudice of any one claiming under him;
- (3) 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.

**Legal effects of agreements without free consent - (Section 19)**

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

**(v) Mistake:** Mistake means innocent or erroneous belief which leads the party to misunderstand the others. Mistake may be either Bilateral or Unilateral.

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

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

**Effect of mistake on validity of a contract:**

Mistake is some unintentional act, omission or error, arising from unconsciousness, ignorance or forgetfulness, imposition or misplaced confidence. It may be of two kinds-

- (i) **Mistake of Law:** A mistake of law does not render a contract void as one cannot take excuse of ignorance of the law of his own country. But if the mistake of law is caused through the inducement of another, the contract may be avoided. Mistake of foreign law is excusable and is treated like a mistake of fact. Contract may be avoided on such mistake.
- (ii) **Mistake of fact:** Where the contracting parties misunderstood each other and are at cross purposes, there is a bilateral or mutual mistake. Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

**Q-15 In which cases the object and consideration is considered to be unlawful?**

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

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

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

**Q-16 State the Agreements that are opposed to public policy?**

**Ans.** Following are the **Agreements opposed to public policy**

- (1) **Trading with enemy:** Any trade with person owing allegiance to a Government at war with India without the licence of the Government of India is void, as the object is opposed to public policy.

- (2) **Stifling Prosecution:** An agreement to stifle prosecution i.e. "an agreement to present proceedings already instituted from running their normal course using force" tends to be a perversion or an abuse of justice; therefore, such an agreement is void. The principle is that one should not make a trade of felony.
- (3) **Maintenance and Champerty:** Maintenance is an agreement in which a person promises to maintain suit in which he has no interest.  
Champerty is an agreement in which a person agrees to assist another in litigation in-exchange of a promise to hand over a portion of the proceeds of the action.
- (4) **Traffic relating to Public Offices:** An agreement to traffic in public office is opposed to public policy, as it interferes with the appointment of a person best qualified for the service of the public. Public policy requires that there should be no money consideration for the appointment to an office in which the public is interested.
- (5) **Agreements tending to create monopolies:** Agreements having for their object the establishment of monopolies are opposed to public policy and therefore void.
- (6) **Marriage brokerage agreements:** An agreement to negotiate marriage for reward, which is known as a marriage brokerage contract, is void, as it is opposed to public policy. For instance, an agreement to pay money to a person hired to procure a wife is opposed to public policy and therefore void.
- (7) **Interference with the course of justice:** An agreement whose object is to induce any judicial officer of the State to act partially or corruptly is void, as it is opposed to public policy. An agreement which contemplates the use of under-hand means to influence legislation is void.
- (8) **Interest against obligation:** The following are examples of agreement that are void as they tend to create an interest against obligation. The object of such agreements is opposed to public policy. An agreement by an agent to receive without his principal's consent compensation from another for the performance of his agency is invalid.  
A, who is the manager of a firm, agrees to pass a contract to X if X pays to A ₹ 200,000 privately; the agreement is void.
- (9) **Consideration Unlawful in Part:** The general rule is that where the legal part of a contract can be severed from the illegal part, the bad part may be rejected and the good one can be retained. But where the illegal part cannot be severed, the contract is altogether void.
- (10) **Agreement in restraint of marriage:** Every agreement in restraint of marriage of any person other than a minor, is void. So if a person, being a major, agrees for good consideration not to marry, the promise is not binding and considered as void agreement.
- (11) **Agreement in restraint of trade (Section 27):** An agreement by which any person is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. But this rule is subject to the following exceptions:
  - (1) Where a person sells the goodwill of a business and agrees with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer or his successor in interest carries on a like business therein, such an agreement is valid (goodwill is the advantage enjoyed by a business on account of public patronage and encouragement from habitual customers). The local limits within which the seller of the goodwill agrees not to carry on similar business must be reasonable.
  - (2) The Indian Partnership Act, 1932 if an outgoing partner makes an agreement with the continuing partners that he will not carry on any business similar to that of the firm within a specified period or within specified local limits, such an agreement, though in restraint of

trade, will be valid, if the restrictions imposed are reasonable. Similarly, under Section 11 of that Act an agreement between partners not to carry on competing business during the continuance of partnership is valid.

- (3) An agreement of service by which an employee binds himself, during the term of his agreement, not to compete with his employer is not in restraint of trade.

**(12) Agreement in restraint of legal proceedings:** An agreement in restraint of legal proceeding is the one by which any party thereto is restricted absolutely from enforcing his rights under a contract through a Court or which abridges the usual period for starting legal proceedings. A contract of this nature is void.

**Q-17 What do we understand by Wagering Agreements? Explain with examples?**

**Ans. Wagering agreement (Section 30):** An agreement by way of a wager is void. It is an agreement involving payment of a sum of money upon the determination of an uncertain event. The essence of a wager is that each side should stand to win or lose, depending on the way an uncertain event takes place in reference to which the chance is taken and in the occurrence of which neither of the parties has legitimate interest.

#### **Essentials of a Wager**

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

#### **Transactions similar to Wager**

- (i) Lottery transactions:** A lottery is a game of chance and not of skill or knowledge. Where the prime motive of participant is gambling, the transaction amounts to a wager.
- (ii) Crossword Puzzles and Competitions:** Crossword puzzles in which prizes depend upon the correspondence of the competitor's solution with a previously prepared solution kept with the editor of a newspaper is a lottery and therefore, a wagering transaction.
- (iii) Speculative transactions:** An agreement or a share market transaction where the parties intend to settle the difference between the contract price and the market price of certain goods or shares on a specified day, is a gambling and hence void.
- (iv) Horse Race Transactions:** A horse race competition where prize payable to the bet winner is less than ₹ 500, is a wager.

#### **Transactions resembling with wagering transaction but are not void**

- (i) Chit fund:** Chit fund does not come within the scope of wager. In case of a chit fund, a certain number of persons decide to contribute affixed sum for a specified period and at the end of a month, the amount so contributed is paid to the lucky winner of the lucky draw.
- (ii) Commercial transactions or share market transactions:** In these transactions in which delivery of goods or shares is intended to be given or taken, do not amount to wagers.
- (iii) Games of skill and Athletic Competition:** Crossword puzzles, picture competitions and athletic competitions where prizes are awarded on the basis of skill and intelligence are the games of skill and hence such competition are valid.

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

**Q-18 Performance of the contract can only be done by Promisor. Comment on the Statement?**

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

1. **Promisor himself:** The contracts which involve the exercise of personal skill or diligence, or which are founded on personal confidence between the parties must be performed by the promisor himself.
2. **Agent:** Where personal consideration is not the foundation of a contract, the promisor or his representative may employ a competent person to perform it.
3. **Legal Representatives:** Legal representatives of the deceased promisor are bound to perform it. But their liability under a contract is limited to the value of the property they inherit from the deceased.
4. **Third persons:** When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.
5. **Joint promisors: (Section 42) :** When two or more persons have made a joint promise, then unless a contrary intention appears by the contract, all such persons must jointly fulfill the promise. If any of them dies, his legal representatives must, jointly with the surviving promisors, fulfill the promise.

**Q-19 What are the types of Performance? What is the effect of refusal to accept offer of Performance?**

**Ans. Actual Performance:** Where a party to a contract has done what he had undertaken to do or either of the parties have fulfilled their obligations under the contract within the time and in the manner prescribed.

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

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

**Q-20 Distinguish between succession and assignment?**

**Ans.** Distinction between two legal concepts, viz., succession and assignment

**Succession**

- When the benefits of a contract are succeeded to by process of law, then both burden and benefits attaching to the contract, may sometimes devolve on the legal heir.
- Suppose, a son succeeds to the estate of his father after his death, he will be liable to pay the debts and liabilities of his father owed during his life-time.
- But if the debts owed by his father exceed the value of the estate inherited by the son then he would not be called upon to pay the excess.
- In other words, the liability of the son will be limited to the extent of the property inherited by him.

**Assignment**

- The benefit of a contract can only be assigned but not the liabilities thereunder.
- This is because when liability is assigned, a third party gets involved therein.  
Thus a debtor cannot relieve himself of his liability to creditor by assigning to someone else his obligation to repay the debt.

**Q-21 State the liability of Joint Promisors and Promisees?**

**Ans. Devolution of joint liabilities (Section 42)**

- When two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives and after the death of any of them, his representative jointly with the survivor or survivors and after the death of last survivor, the representatives of all jointly, must fulfil the promise
- When two or more persons make a joint promise, the promisee may, in the absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise.
- Each of two or more joint promisors may compel every other joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract.
- It means if one of the joint promisors is made to perform the whole contract, he can call for a contribution from others.
- Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor or joint promisors, neither does it free the joint promisors so released from responsibility to the other joint promisor or promisors.
- If any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.

**Rights of Joint Promisees**

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

**Q-22 State the rules regarding performance of Reciprocal Promises?**

**Ans.**

**(1) Order of performance of reciprocal promises**

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

**(2) Liability of party preventing event on which the contract is to take effect**

When a contract contains reciprocal promises, and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented ; and he is entitled to compensation from the other party for any loss he may sustain in consequence of the non- performance of the contract.

**(3) Effect of default as to that promise which should be rest performed, in contract consisting of reciprocal promises**

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

**(4) Effect of Failure to Perform at a Time Fixed when Time is Essential**

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

**(5) Effect of such failure when time is not essential**

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

**(6) Reciprocal promise to do certain things that are legal, and also some other things that are illegal**

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

**Q-23 Explain the concept of Impossibility in detail? Also state the Types of Impossibilities?**

**Ans.** “An agreement to do an act impossible in itself is void”.

A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful. The impossibility of performance may be of the two types, namely (a) initial impossibility, and (b) subsequent impossibility.

**(1) Initial Impossibility (Impossibility existing at the time of contract):** When the parties agree upon doing of something which is obviously impossible in itself the agreement would be void. Impossible in itself means impossible in the nature of things. The fact of impossibility may be and may not be known to the parties.

- **If known to the parties:** It would be observed that an agreement constituted, quite unknown to the parties, may be impossible of being performed and hence void.
- **If unknown to the parties:** Where both the promisor and the promisee are ignorant of the impossibility of performance, the contract is void.
- **If known to the promisor only:** Where at the time of entering into a contract, the promisor alone knows about the impossibility of performance, or even if he does not know though he should have known it with reasonable diligence, the promisee is entitled to claim compensation for any loss he suffered on account of non-performance.

**(2) Subsequent or Supervening impossibility (Becomes impossible after entering into contract):**

- When performance of promise become impossible or illegal by occurrence of an unexpected event or a change of circumstances beyond the contemplation of parties, the contract becomes void.
- Sometimes, the performance of a contract is quite possible when it is made. But subsequently, some event happens which renders the performance impossible or unlawful. Such impossibility is called the subsequent or supervening.

- It is also called the post-contractual impossibility.
- The effect of such impossibility is that it makes the contract void, and the parties are discharged from further performance of the contract.

**Q-24 State the rule of Appropriation of payment?**

**Ans.** Sometimes, a debtor owes several debts to the same creditor and makes payment, which is not sufficient to discharge all the debts. In such cases, the payment is appropriated as follows:

- (i) **Application of payment where debt to be discharged is indicated:** Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly.
- (ii) **Application of payment where debt to be discharged is not indicated:** Where the debtor has omitted to intimate and there are no other circumstances indicating to which debt the payment is to be applied the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, where its recovery is or is not barred by the law in force for the time being as to the limitation of suits.
- (iii) **Application of payment where neither party appropriates (Section 61):** Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payments shall be applied in discharge of each proportionately

**Q-25 How the contract is discharged by mutual agreement?**

**Ans.** A contract is discharged by mutual agreement in the following ways:

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

- **Novation:** The parties to a contract may substitute a new contract for the old. If they do so, it will be a case of novation. On novation, the old contract is discharged and consequently it need not be performed.
- **Rescission:** A contract is also discharged by rescission. When the parties to a contract agree to rescind it, the contract need not be performed. In the case of rescission, only the old contract is cancelled and no new contract comes to exist in its place.
- **Alteration:** The terms of contract may be so altered by mutual agreement that the alteration may have the effect of substituting a new contract for the old one. In other words, the distinction between novation and alteration is very slender.

**Difference between Novation and alteration:**

**Novation**

It means substitution of an existing contract with a new one.

Novation may be between same parties or there may be a change in the contracting parties.

In case of novation there is altogether a substitution of new contract in place of the old contract.

**Alteration**

Alteration the terms of the contract may be altered by mutual agreement by the contracting parties But the parties to the contract will remain the same.

In case of alteration it is not essential to substitute a new contract in place of the old contract.

In alteration, there may be a change in some of the terms and conditions of the original agreement.

- **Remission or Waiver:** "Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance or may accept instead of it any satisfaction which he thinks fit". In other words, a contract may be discharged by remission.

**Q-26 State the ways of Discharge of Contract?**

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

1. **Discharge by performance:** It takes place when the parties to the contract fulfil their obligations arising under the contract within the time and in the manner prescribed. Discharge by performance may be
  - (1) Actual performance; or
  - (2) Attempted performance.
2. **Discharge by mutual agreement:** The Indian Contract Act provides if the parties to a contract agree to substitute a new contract for it, or to rescind or remit or alter it, the original contract need not be performed. The principles of Novation, Rescission, Alteration and Remission are already discussed in previous question.
3. **Discharge by impossibility of performance:** The impossibility may exist from the very start. In that case, it would be impossibility ab initio. Alternatively, it may supervene. Supervening impossibility may take place owing to:
  - Change in law
  - Destruction of the subject-matter essential to that performance
  - Non-existence or non-occurrence of particular state of things
  - Declaration of a war
4. **Discharge by lapse of time:** A contract should be performed within a specified period as prescribed by the Limitation Act, 1963. If it is not performed and if no action is taken by the promisee within the specified period of limitation, he is deprived of remedy at law.
5. **Discharge by operation of law:** A contract may be discharged by operation of law which includes by death of the promisor, by insolvency etc.
6. **Discharge by breach of contract:** Breach of contract may be actual breach of contract or anticipatory breach of contract.
  - If one party defaults in performing his part of the contract on the due date, he is said to have committed breach thereof.
  - On the other hand, a person repudiates a contract before the stipulated time for its performance has arrived, he is deemed to have committed anticipatory breach.
  - If one of the parties to a contract breaks the promise the party injured thereby, has not only a right of action for damages but he is also discharged from performing his part of the contract.

**Q-27 What do we understand by Breach of Contract. Also state the types of Breach of Contract?**

**Ans.** Breach means failure of a party to perform his or her obligation under a contract. Breach of contract may arise in two ways:

- (1) Actual breach of contract
- (2) Anticipatory breach of contract

**Actual breach of contract** may be committed-

- (a) At the time when the performance of the contract is due: Here breach has been committed at the time when the performance becomes due.
- (b) During the performance of the contract: Here breach of contract occurs during the performance of the contract, one party fails or refuses to perform his obligation under it by express or implied act.

**Anticipatory breach of contract** is a breach of contract occurring before the time fixed for performance has arrived. When the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived, it is called Anticipatory Breach.

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

- (a) Expressly by words spoken or written, and
- (b) Impliedly by the conduct of one of the parties.

**Effect of Anticipatory Breach:** The promisee is excused from performance or from further performance.

Further he gets an option:

- (1) To either treat the contract as "rescinded and sue the other party for damages from breach of contract immediately without waiting until the due date of performance;  
or
- (2) He may elect not to rescind but to treat the contract as still operative, and wait for the time of performance and then hold the other party responsible for the consequences of non-performance.

**Q-28 What are the remedies for Breach of Contract? Also state if the party is entitled to damages for Breach of Contract?**

**Ans.** The following are the remedies for Breach of Contract:

- (1) **Rescission of contract:** When a contract is broken by one party, the other party may treat the contract as rescinded. In such a case he is absolved of all his obligations under the contract and is entitled to compensation for any damages that he might have suffered.
- (2) **Quantum Meruit:** Where one person has rendered service to another in circumstances which indicate an understanding between them that it is to be paid for although no particular remuneration has been fixed, the law will infer a promise to pay. *Quantum Meruit* i.e. as much as the party doing the service has deserved.

For the application of this doctrine, two conditions must be fulfilled:

- (1) It is only available if the original contract has been discharged.
- (2) The claim must be brought by a party not in default.

The object of allowing a claim on quantum meruit is to recompensate the party or person for value of work which he has done.

**The claim for quantum meruit arises in the following cases:**

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

(f) When an indivisible contract for a lump sum is completely performed but badly the person who has performed the contract can claim the lump sum, but the other party can make a deduction for bad work.

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

(4) **Suit for injunction:** Where a party to a contract is negating the terms of a contract, the court may by issuing an 'injunction orders', restrain him from doing what he promised not to do.

(5) **Damages: Remedy by way of Damages or Kind of Damages**

It entitles the injured party to recover compensation for the loss suffered by it due to the breach of contract, from the party who causes the breach. The damages which may be awarded to the injured party may be of the following kinds:

(i) **Ordinary damages:** 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 cause to him thereby, which naturally arose in the usual course of things from such breach.

Such compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach.

(ii) **Special damages:** Where a party to a contract receives a notice of special circumstances affecting the contract, he will be liable not only for damages arising naturally and directly from the breach but also for special damages.

(iii) **Vindictive or Exemplary damages**

These damages may be awarded only in two cases -

(a) for breach of promise to marry because it causes injury to his or her feelings; and

(b) for wrongful dishonour by a banker of his customer's cheque because in this case the injury due to wrongful dishonour to the drawer of cheque is so heavy that it causes loss of credit and reputation to him

(iv) **Nominal damages:** Nominal damages are awarded where the plaintiff has proved that there has been a breach of contract but he has not in fact suffered any real damage. It is awarded just to establish the right to decree for the breach of contract. The amount may be a rupee or even 10 paise.

(v) **Damages for deterioration caused by delay:** In the case of deterioration caused to goods by delay, damages can be recovered from carrier even without notice. The word 'deterioration' not only implies physical damages to the goods but it may also mean loss of special opportunity for sale.

(vi) **Pre- fixed damages:** Sometimes, parties to a contract stipulate at the time of its formation that on a breach of contract by any of them, a certain amount will be payable as damage. It may amount to either liquidated damages or a penalty.

**Q-29 What is the difference between Liquidated Damages and Penalty?**

**Ans. Distinction between liquidated damages and penalty**

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

1. If the sum payable is so large as to be far in excess of the probable damage on breach, it is certainly a penalty.
2. Where a sum is expressed to be payable on a certain date and a further sum in the event of default being made, the latter sum is a penalty because mere delay in payment is unlikely to cause damage.
3. The expression used by the parties is not final. The court must find out whether the sum fixed in the contract is in truth a penalty or liquidated damages. If the sum fixed is extravagant or exorbitant, the court will regard it as a penalty even if, it is termed as liquidated damages in the contract.
4. The essence of a penalty is payment of money stipulated as a terrorem of the obligating party. The essence of liquidated damages is a genuine pre-estimate of the damage.
5. English law makes a distinction between liquidated damages and penalty, but no such distinction is followed in India. The courts in India must ascertain the actual loss and award the same which amount must not, however exceed the sum so fixed in the contract. The courts have not to bother about the distinction but to award reasonable compensation not exceeding the sum so fixed.

**Q-30 What is a Contingent Contract? State the Essentials And Rules of enforcement relating to Contingent Contract?**

**Ans. Contingent Contract (Section 31)**

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

Contracts of Insurance, indemnity and guarantee fall under this category.

**Essentials of a contingent contract**

- (a) The performance of a contingent contract would depend upon the happening or non-happening of some event or condition. The condition may be precedent or subsequent.
- (b) The event referred to is collateral to the contract. The event is not part of the contract. The event should be neither performance promised nor a consideration for a promise.
- (c) The contingent event should not be a mere 'will' of the promisor. The event should be contingent in addition to being the will of the promisor.
- (d) The event must be uncertain. Where the event is certain or bound to happen, the contract is due to be performed, then it is a not contingent contract.

**Rules relating to Enforcement**

The rules relating to enforcement of a contingent contract are as follows:

- (a) **Enforcement of contracts contingent on an event happening:** Where a contract identifies happening of a future contingent event, the contract cannot be enforced until and unless the event 'happens'. If the happening of the event becomes impossible, then the contingent contract is void.
- (b) **Enforcement of contracts contingent on an event not happening:** Where a contingent contract is made contingent on a non-happening of an event, it can be enforced only when its happening becomes impossible.
- (c) **A contract would cease to be enforceable if it is contingent upon the conduct of a living person when that living person does some thing to make the 'event' or 'conduct' as impossible of happening.**

Section 34 says that "if a contract is contingent upon as to how a person will act at an unspecified time, the event shall be considered to have become impossible when such person does anything

which renders it impossible that he should so act within any definite time or otherwise than under further contingencies”.

- (d) **Contingent on happening of specified event within the fixed time:** Section 35 says that Contingent contracts to do or not to do anything, if a specified uncertain event happens within a fixed time, becomes void if, at the expiration of time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
- (e) **Contingent on specified event not happening within fixed time:** Section 35 also says that - “Contingent contracts to do or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired, and such event has not happened or before the time fixed has expired, if it becomes certain that such event will not happen”.
- (f) **Contingent on an impossible event:** Contingent agreements to do or not to do anything, if an impossible event happens are void, whether the impossibility of the event is known or not to the parties to the agreement at the time when it is made.

**Q-31 State the difference between Contingent Contract and Wagering Agreement?**

**Ans. Difference between a contingent contract and a wagering agreement**

Sr. No.	Basis of difference	Contingent contract	Wagering agreement
1.	Meaning	A contingent contract is a contract to do or not to do something with reference to a collateral event happening not happening.	A wagering agreement is a promise to give money or money's worth with reference to or an uncertain event happening or not happening.
2.	Reciprocal promises	Contingent contract may not contain reciprocal promises.	A wagering agreement consists of reciprocal promises.
3.	Uncertain event	In a contingent contract, the event is collateral.	In a wagering contract, the uncertain event is the core factor.
4.	Nature of contract	Contingent contract may not be wagering in nature.	A wagering agreement is essentially contingent in nature.
5.	Interest of contracting parties	Contracting parties have interest in the subject matter in contingent contract.	The contracting parties have no interest in the subject matter.
6.	Doctrine of mutuality of lose and gain	Contingent contract is not based on doctrine of mutuality of lose and gain.	A wagering contract is a game, losing and gaining alone matters.
7.	Effect of contract	Contingent contract is valid.	A wagering agreement is void.

**Q-32 What is Quasi Contract? State the kinds of Quasi Contract?**

**Ans. Quasi Contract**

- ♦ A valid contract must contain certain essential elements, such as offer and acceptance, capacity to contract, consideration and free consent.

- ◆ But sometimes the law implies a promise imposing obligations on one party and conferring right in favour of the other even when there is no offer, no acceptance, no genuine consent, lawful consideration, etc. and in fact neither agreement nor promise.
- ◆ Such cases are not contracts in the strict sense, but the Court recognises them as **relations resembling those of contracts** and enforces them as if they were contracts.
- ◆ Hence the term **Quasi –contracts (i.e. resembling a contract)**.
- ◆ Quasi contracts are based on principles of equity, justice and good conscience.

### Types of Quasi Contract

- (a) **Claim for necessaries supplied to persons incapable of contracting:** If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.
- (b) **Payment by an interested person:** A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- (c) **Obligation of person enjoying benefits of non-gratuitous act:** As per the Act “where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered”.

**It thus follows that for a suit to succeed, the plaintiff must prove:**

- (i) that he had done the act or had delivered the thing lawfully;
  - (ii) that he did not do so gratuitously; and
  - (iii) that the other person enjoyed the benefit
- (d) **Responsibility of finder of goods :** ‘A person who finds goods belonging to another and takes them into his custody is subject to same responsibility as if he were a bailee’.
- Thus a finder of lost goods has:
- (i) to take proper care of the property as man of ordinary prudence would take
  - (ii) no right to appropriate the goods and
  - (iii) to restore the goods if the owner is found.
- (e) **Money paid by mistake or under coercion:** “A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it”.
- Every kind of payment of money or delivery of goods for every type of ‘mistake’ is recoverable.

**CLASS WORK****MULTIPLE CHOICE QUESTIONS**

1. An agreement enforceable by law is a  
(a) Promise (b) Contract (c) Obligation (d) Lawful promise
2. A void agreement is one which is -  
(a) Valid but not enforceable (b) Enforceable at the option of both the parties  
(c) Enforceable at the option of one party (d) Not enforceable in a court of law.
3. An agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a  
(a) Valid Contract (b) Void contract (c) Voidable contract (d) Illegal contract
4. When the consent of a party is not free, the contract is  
(a) Void (b) Voidable (c) Valid (d) Illegal
5. In case of illegal agreements, the collateral agreements are:  
(a) Vaic (b) Void (c) Void able (d) None of these
6. An offer may lapse by:  
(a) Revocation (b) Counter Offer  
(c) Rejection of offer by offeree (d) All of these
7. A proposal when accepted becomes a  
(a) Promise (b) Contract (c) Offer (d) Acceptance
8. Which of the following statement is false? Consideration:  
(a) Must move at the desire of the promisor. (b) May move from any person  
(c) Must be illusory (d) Must be of some value
9. Consideration must move at the desire of  
(a) Promisor (b) Promisee  
(c) Any other person (d) Any of these
10. Consideration may be  
(a) Past (b) Present (c) Future (d) All of the above
11. Consideration in simple term means:  
(a) Any this in return (b) Something in return  
(c) Everything in return (d) Nothing in return.
12. Which of the following is not an exception to the rule - No consideration, No Contract.  
(a) Compensation for involuntary services (b) Love & Affection  
(c) Contract of Agency (d) Gift
13. Ordinarily, a minor's agreement is  
(a) Void ab initio (b) Voidable (c) Valid (d) Unlawful
14. Consent is not said to be free when it is caused by  
(a) Coercion (b) Undue influence (c) Fraud (d) All of these

15. When the consent of a party is obtained by fraud, the contract is;  
(a) Void (b) Voidable (c) Valid (d) Illegal
16. The threat to commit suicide amounts to  
(a) Coercion (b) Undue influence (c) Misrepresentation (d) Fraud
17. Moral pressure is involved in the case of  
(a) Coercion (b) Undue Influence (c) Misrepresentation (d) Fraud
18. A wrong representation when made without any intention to deceive the other party amounts to  
(a) Coercion (b) Undue influence (c) Misrepresentation (d) Fraud
19. Which of the following statement is true?  
(a) A threat to commit suicide does not amount to coercion  
(b) Undue influence involves use of physical pressure  
(c) Ignorance of law is no excuse  
(d) Silence always amounts to fraud
20. In case of illegal agreement the collateral agreements are:  
(a) Valid (b) Void (c) Voidable (d) Any of these
21. An agreement the object or consideration of which is unlawful, is  
(a) Void (b) Valid (c) Voidable (d) Contingent
22. An agreement is void if it is opposed to public policy. Which of the following is not covered by heads of public policy.  
(a) Trading with an enemy (b) Trafficking in public offices  
(c) Marriage brokerage contracts (d) Contracts to do impossible acts.
23. On the valid performance of the contractual obligations by the parties, the contract  
(a) Is discharged (b) becomes enforceable  
(c) becomes void (d) None of these
24. Which of the following person can perform the contract?  
(a) Promisor alone (b) Legal representatives of promisor  
(c) Agent of the promisor (d) All of these.
25. A contract is discharged by novation which means the  
(a) cancellation of the existing contract  
(b) change in one or more terms of the contract  
(c) substitution of existing contract for a new one  
(d) none of these
26. A contract is discharged by rescission which means the  
(a) change in one or more terms of the contract (b) acceptance of lesser performance  
(c) abandonment of rights by a party (d) cancellation of the existing contract
27. When prior to the due date of performance, the promisor absolutely refuses to perform the contract, it is known as  
(a) abandonment of contract (b) remission of contract  
(c) actual breach of contract (d) anticipatory breach of contract

28. In case of anticipatory breach, the aggrieved party may treat the contract
- (a) as discharged and bring an immediate action for damages
  - (b) as operative and wait till the time for performance arrives
  - (c) exercise option either (a) or (b)
  - (d) only option (a) is available
29. In case of breach of contract, which of the following remedy is available to the aggrieved party?
- (a) Suit for rescission
  - (b) Suit for damages
  - (c) Suit for specific performance
  - (d) All of these
30. Sometimes, a party is entitled to claim compensation in proportion to the work done by him. It is possible by a suit for
- (a) damage
  - (b) injunction
  - (c) quantum meruit
  - (d) none of these
31. Generally, the following damages are not recoverable?
- (a) Ordinary damages
  - (b) Special damages
  - (c) Remote damages
  - (d) Nominal damages
32. A contract dependent on the happening or non-happening of future uncertain event, is
- (a) Uncertain contract
  - (b) Contingent contract
  - (c) Void contract
  - (d) Voidable contract
33. A contingent contract is
- (a) Void
  - (b) Voidable
  - (c) Valid
  - (d) Illegal
34. A contingent contract dependent on the happening of future uncertain event can be enforced when the event
- (a) happens
  - (b) becomes impossible
  - (c) does not happen
  - (d) either of these
35. A agrees to pay ' One lakh to B if he brings on earth a star from sky. This is a contingent contract and
- (a) Illegal
  - (b) Valid
  - (c) Void able
  - (d) Void

## THEORETICAL QUESTIONS

- Q-1** "All contracts are agreements, but all agreements are not contracts". Comment.
- Q-2** Define the term "Acceptance". Discuss the legal provisions relating to communication of acceptance.

- Q-3** Distinction between Void and Illegal Agreements.
- Q-4** Define consideration. State the characteristics of a valid consideration.
- Q-5** "To form a valid contract, consideration must be adequate". Comment.
- Q-6** "Mere silence does not amount to fraud". Discuss.
- Q-7** "Though a minor is not competent to contract, nothing in the Contract Act prevents him from making the other party bound to the minor". Discuss.
- Q-8** "An agreement, the meaning of which is not certain, is void". Discuss.
- Q-9** Who are disqualified persons to do the contract?
- Q-10** "The basic rule is that the promisor must perform exactly what he has promised to perform." Explain stating the obligation of parties to contracts.
- Q-11** Discuss the effect of accepting performance from third person.
- Q-12** "When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promisee may put an end to the contract". Explain.
- Q-13** "An anticipatory breach of contract is a breach of contract occurring before the time fixed for performance has arrived". Discuss stating also the effect of anticipatory breach on contracts.
- Q-14** "When a contract has been broken, the party who suffers by such a breach is entitled to receive compensation for any loss or damage caused to him". Discuss.
- Q-15** "Liquidated damage is a genuine pre-estimate of compensation of damages for certain anticipated breach of contract whereas Penalty on the other hand is an extravagant amount stipulated and is clearly unconscionable and has no comparison to the loss suffered by the parties". Explain.
- Q-16** Explain the meaning of 'Contingent Contracts' and state the rules relating to such contracts.
- Q-17** Explain the-term 'Quasi Contracts' and state their characteristics.

## HOME WORK

### PRACTICAL PROBLEMS

1. A woman fraudulently represented to a firm of jewellers that she was the wife of a certain minister and thus obtained two pearl necklaces on credit on the pretext of buying them. She subsequently sold those necklaces to a third party. Can the jeweller recover the necklaces from the third party?

**Ans.** **Hint : Third party has acquired right in good faith, so contract remains valid.**

2. Peter Feraro offered to pay ₹ 10,000 to any person, who would swim a hundred yards on Bombay's sea coast on the New Year's Day of 1983. A fisherman, without any information about the offer, claimed ₹ 10,000 on swimming the distance to save his life after he was accidently thrown overboard by the rough sea waves. Can the fisherman claim the money?

Or

A lost his dog. He sent his servant to search the dog. When he did not hear about the lost dog, he advertised a reward of ₹ 100 to any person who found the lost dog and returned it to A. The servant

found the lost dog and returned the dog to A. When the servant came to know about the reward of ₹ 100, he claimed the reward from A. Can he claim the reward? Give reasons.

**Ans. Hint : Acceptance in ignorance of offer is invalid.**

3. A took a bet of ₹ 500 with B that a certain horse would win a race. Under this agreement A had to deposit ₹ 100 with B. Since A had no money, he approached his friend C, who advanced the sum to him on the condition that A was to return ₹ 200, if A should win bet against B, but to return nothing, if A lost, A won his bet against B. Can C recover ₹ 200 from A?

**Ans. Hint : Wagering Agreements are void.**

4. A invites B to see a picture with him. B accepts the offer. A purchases a ticket for B and waits for him at the cinema hall. B does not turn up. Has A any cause of action against B?

**Ans. Hint : Social Agreement.**

5. Anil Was due to perform a contract on 20th Feb. 1989, but on 16th Feb., repudiated his obligation. On 23rd Feb., the contract became illegal through a change in law. Varun, the other party to the contract, filed a suit for breach of contract on 20th Feb. Decide the case with reasons.

**Ans. Hint : Anticipatory breach gives party a right to cancel the contract & claim damages.**

6. An employee agrees not to institute any legal proceedings against his employer. Can the agreement be enforced by the employer?

**Ans. Hint : Agreement in Restraint of legal proceedings is void.**

7. A borrower grants a power of attorney to bank authorising the bank to sell a certain property belonging to him and appropriate the sale proceeds towards his indebtedness. He also agrees not to institute any legal proceedings against the bank challenging either the bank's actions or its statements of account. The property is sold for a low price and the bank calls upon the borrower to pay the balance. Can the borrower institute legal proceedings against the bank questioning the sale?

**Ans. Hint : Agreement in Restraint of legal proceedings is void.**

8. A bank sanctions to an oil merchant a loan against the security of groundnut oil and an agreement is entered into between the bank and the borrower. Before the loan is disbursed, the Reserve Bank issues a statutory directive to all banks prohibiting grant of advances against the security of groundnut oil and, therefore, the bank cancels the loan. Can the customer sue the bank for damages for breach of contract?

**Ans. Hint : Contract discharged by impossibility doesnot give party a right to claim damages.**

9. A stationer agreed to supply white paper on rate contract for one year. Later, due to steep increase in market prices, the contractor stated that he would suffer very heavy loss by supplying at the contracted rates. Under the contract, the rates were to be firm except for statutory levies. The stationer claimed that the contract had become commercially impossible of performance and that he was discharged. Comment on the legality of his plea.

**Ans. Hint : In commercial impossibility contract remains valid.**

10. A letter of allotment of shares was claimed to have been posted by a company, but the applicant denied to have received it. State if the contract is validly concluded in this case. Give reasons.

**Ans. Hint : Contract is valid.**

11. A Hindu husband executed and registered a document in favour of his wife whereby, referring to quarrels and disagreement between the parties, he agreed to transfer one of his properties to her. Later, he refused to effect the transfer. Can the wife file a suit against the husband for enforcing the contract?

**Ans. Hint : Natural love and affection was missing.**

12. A, a tradesman, leaves his goods at B's house by mistake. B treats the goods as his own and appropriates them. Can A file a suit against B for the price of such goods?

**Ans. Hint : Quasi Contract**

13. A Mohammedan lady asks for your advice whether she can sue her own father-in-law to recover arrears of allowance payable to her by the father-in-law under an agreement between her own father and her father-in-law in consideration of her marriage. Give reasons for your answer.

**Ans. Hints : Beneficiary can file a valid suit.**

14. Miss Kokila agreed to sing at the Star Theatre for a period of three months beginning 1st January 1996. She further agreed not to sing at any other theatre during this period. Is this contract enforceable against her?

**Ans. Hint : Suit for injunction.**

15. A, a minor, borrowed ₹ 5,000 on loan from B, stating that he was a major and executed a receipt in his favour. Discuss the remedies available to B to recover the money lent by him.

**Ans. Hint : Contract with a minor is Void-Ab-Initio.**

16. S, a singer, contracts with M, the manager of a theatre, to sing at the latter's theatre for two evenings in every week during the next two months. M engages to pay her ₹ 300 for each evening's performance. On the seventh evening, S wilfully absents herself from the theatre. M, in consequence, wants to rescind the contract and claim compensation for the loss suffered by him through the non-fulfilment of the contract by S. Advise.

**Ans. Hint : Party can cancel the contract & claim damages for breach of contract.**

17. A enters into a contract with B for supplying 800 tonnes of iron ore within 4 months. A fails to make delivery in time owing to difficulty in transport. But he admitted the availability of iron ore in the market at a higher price. Can A take the plea of impossibility of performance? Give reasons.

**Ans. Hint : No. Contract remains valid.**

18. X, an old lady, by a deed of gift made over certain property to her daughter D, with the specific directions that she should pay P, who is the sister of the old lady, a sum of ₹ 100 per month. The same day D entered into an agreement with P to pay her the agreed amount. D now refuses to pay her aunt P, the above amount on the plea that no consideration had moved from P to D. P, therefore, sues D. Is the suit maintainable and can D be held liable to pay the amount? Decide.

**Ans. Hints : Consideration may move from promisee or any other person.**

19. A owes B rupees ten thousand. C, who is a friend of A, pays to B rupees five thousand in full satisfaction of B's claim on A which B accepts. Can B now recover the balance from A? Give reasons.

**Ans. Hint : In case of remission, contract is discharged.**

**20.** A is a minor aged seventeen years, who broke his right leg in a football match. He engaged B, a doctor, to set it. Does the doctor have a valid claim for his services? Give reasons.

**Ans. Hint : Minor's property is liable for necessities.**

**21.** A is sixteen years of age. He lends rupees one lakh to B on the strength of a mortgage executed in his favour. Is the borrower liable to repay the money? Give reasons.

**Ans. Hint : Contract for benefit of minor is valid.**

**22.** Explain the concept of 'misrepresentation' in matters of contract. Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide giving reasons.

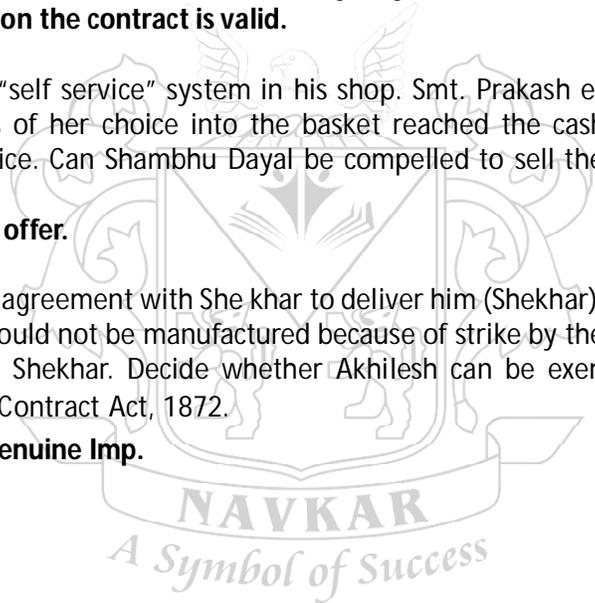
**Ans. Hint : One to ratification the contract is valid.**

**23.** Shambhu Dayal started "self service" system in his shop. Smt. Prakash entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Shambhu Dayal be compelled to sell the said articles to Smt. Prakash? Decide.

**Ans. Hint : Invitation to an offer.**

**24.** Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.

**Ans. Hint : Strike is not a genuine Imp.**



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