

Indian Contract Act, 1872

Introduction

- 1) INDIAN CONTRACT ACT, 1872 governs law relating to contracts in India.
- 2) The Act was passed by British India and is based on the principles of English Common Law.
- 3) This Act is applicable to whole of India including Jammu and Kashmir.
- 4) The Act came into effect from 1st September, 1872 and applies to all contracts in India.

Important Definitions under the Act –

- 1) Proposal – Sec 2(a) 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.
- 2) Acceptance – Sec 2(b) When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise. Person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”.
- 3) Agreement – Sec 2(e) Every promise and every set of promises, forming the consideration for each other, is an agreement. In simple words, Agreement = Offer + Acceptance
- 4) Void Agreement – Sec 2(g) An agreement not enforceable by law is said to be void.
- 5) Contract – Sec 2(h) An agreement enforceable by law is called as contract. In simple words, Contract = Agreement + Enforceability
- 6) Voidable Contract – 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 every agreement contract?

- 1) No, every agreement is not a contract.
- 2) An agreement to become a contract must give rise to a legal obligation (duty)

An agreement can be –

Legal obligation

- a) An agreement giving rise to social obligation is not a contract.
- b) Not covered under ICA, 1872 (Indian Contract Act, 1872)

Social obligation

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BASIS FOR COMPARISON	AGREEMENT	CONTRACT
Meaning	When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
Elements	Offer and Acceptance	Agreement and Enforceability
Defined in	Section 2 (e)	Section 2 (h)
In writing	Not necessarily	Normally written and registered
Legal obligation	Does not creates legal obligation	Creates legal obligation
One in other	Every agreement need not be a contract.	All contracts are agreement
Scope	Wide	Narrow

Essential elements of a valid contract –

Under Section 10 –

- a) Agreement
- b) Free Consent
- c) Competency of the parties
- d) Lawful Consideration
- e) Legal object
- f) Not expressly declared to be void

Not given under section 10 but still are essentials of valid contract –

- a) Two parties
- b) Intention to create legal relationship
- c) Legal formalities
- d) Certainty of meaning
- e) Possibility of performance

Two parties – There should be at least 2 parties for a contract.

2) Offer – There shall be an offer or proposal by one party

3) Acceptance – Offer made should be accepted by the other party

4) Lawful consideration – The agreement shall be supported by lawful consideration

5) Lawful object – The object and consideration of the contract shall be legal

6) Competent (capacity) to contract – Section 11 a) The parties to the contract shall be competent to contract b) For a person to become competent to contract – - Such person should be major (18+) - Such person should be of sound mind (Section 12) - Such person should not be disqualified by law

7) Free consent – a) There shall be free consent between the parties to the contract b) Consent is said to be free when the following elements are absent (Section 14) - Coercion (Section 15) - Undue influence (Section 16) - Fraud (Section 17) - Misrepresentation (Section 18) - Mistake (Section 20, 21, 22)

8) Intention to create legal relationships – The intention of the parties to a contract must be to create a legal relationship between them. Example: A husband promising his wife to buy her a ‘necklace’ on occasion of her birthday is not a contract.

9) Possibility of performance – The agreement should be capable of being performed Example - if A promises B to bring rainfall through magic. Such agreement cannot be enforced

10) Legal formalities – Legal formalities if any required for particular agreement such as registration, writing, they must be followed

Offer –

A) **Definition** – Section 2(a) 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

B) Types of offer –

1) General Offer - It is an offer to the whole world.

2) Specific offer - It is an offer made to a particular person or group of persons.

3) Express offer - It is an offer which is made by words either oral or in writing.

4) Implied offer - It is an offer which is made by conduct or gesture of the parties.

5) Counter offer - When a person to whom the offer is made does not accept the offer [as it is] he counters the condition. This is called counter offer.

6) Cross offer - When two offers of same terms and conditions cross each other at same time, it is called cross offer.

7) Standing offer - An offer is a standing offer if it is intended to remain open for a specified period

C) Essentials of valid offer –

- 1) Offer may be expressed or implied – An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.
- 2) Offer may be specific or general – a) A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer. b) A general offer is an offer made to the public at large.
- 3) Offer must create Legal Relations – An offer to be valid must create legal relationship between the parties. Say for example a dinner invitation extended by A to B is not a valid offer.
- 4) Offer must be Clear, not Vague – The terms of an offer should not be vague (not clear / confusing) For e.g. - A offers to sell B fruits worth Rs 5000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.
- 5) Offer must be Communicated to the Offeree – No offeree can accept the proposal without knowledge of the offer (*Lalman Shukla v. Gauri Dutt.*)
- 6) A statement of price is not an offer
- 7) Offer cannot contain a Negative Condition – The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer Example: A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.
- 8) A mere statement of intention is not an offer. Thus, a person who attended the advertised place of auction could not sue for breach of contract if the auction was cancelled
- 9) Offer must be distinguished from an invitation to offer –

Harvey v Facey

- Facts – a) 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.”
- b) Facey responded stating “Bumper Hall Pen £900”
- c) Harvey responded stating that he would accept £900 and asking Facey to send the title deeds.
- d) Facey then stated he did not want to sell.
- e) Harvey sued, stating that the telegram was an offer and he had accepted, therefore there was a binding contract.

Decision –

- 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.

Acceptance

A) Definition – Section 2(b) “When the person to whom an offer is made signifies his assent thereto the proposal is said to be accepted, A proposal when accepted becomes a promise.”

B) Essentials of valid Acceptance –

- 1) Acceptance must be absolute and unqualified –
 - a) There must be an absolute and unqualified acceptance of all the terms of the offer. b) Qualified acceptance would amount to rejection of the offer
- 2) Acceptance must be communicated – Acceptance must be communicated by the acceptor
- 3) Acceptance must be in a prescribed or reasonable mode –
 - a) Offer should be accepted in a prescribed mode.
 - b) If the offer or prescribes no mode of acceptance, the acceptances must be communicated according in any reasonable mode such as in writing or oral.
- 4) Acceptance must be given within a reasonable time and before the offer lapses –
 - a) Acceptance must be given within specified time.
 - b) If no time is specified, then acceptance may be made within reasonable time.
 - c) Acceptance should be made before offer lapses (expires).
- 5) Acceptance cannot precede an offer –
 - a) Acceptance must be given after receiving the offer.
 - b) It should not precede the offer.
- 6) Acceptance must be given only by the person to whom the offer is made –
 - a) An offer can be accepted only by the person or persons to whom it is made
 - b) It cannot be accepted by another person without the consent of the offeror.
- 7) Rejected offer can be accepted only on renewal – Rejected offer can be accepted only, on renewal; offer once rejected can't be accepted again unless a fresh offer is made.

Communication Of Offer & Acceptance And Revocation – Section 4 & 5

Communication of offer is complete when it comes to the knowledge of offeree.

Communication of acceptance is complete

As against Offeror

When offeree puts the acceptance in a course of transmission and it is beyond his reach to stop it

As against Offeree

When the acceptance comes to the knowledge of offeror

Revocation (withdrawal / cancellation) of offer – Revocation of offer is valid before offeree puts the acceptance in course of transmission and it is out of his reach to stop it.

Revocation of acceptance – Revocation of acceptance is valid before acceptance comes to the knowledge of offeror

Consideration (quid pro quo)

A) Definition – 2(d) ‘When at the desire of the promisor, the promisee or any other person had done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise.’

B) Meaning – a) Consideration means something in return b) It may be an act or abstinence or promise Note – As per Section 25 of the Indian Contract Act, 1872 “An agreement made without consideration is void”

Types of consideration –

Past Consideration – In case of past consideration, the promisor had received the consideration before the date of promise

Present consideration (Executed consideration) – Present consideration is one in which one of the parties to the contract has performed his part of the promise, which Constitutes the consideration for the promise by the other side it is known as present consideration.

Future Consideration (Executory consideration)– when consideration is to move at a future date then it is called as future consideration

D) Essentials of valid consideration

– 1) Consideration must move at the desire of the promisor –

a) Consideration must move at the desire of the promisor.

b) whatever is done must have been done at the desire of the promisor and not voluntarily or not at the desire of a third party Example:

- If Munna rushes to Circuit’s help whose house is on fire, there is no consideration but a voluntary act. But if Munna goes to Circuit’s help at Circuit’s request, there is good consideration as Circuit’s did not wish to do the act gratuitously (without consideration)

• Uday Bhai agrees to sell his horse to Majnu Bhai for ` 50,000. Here consideration for Uday Bhai for selling horse to Majnu Bhai is consideration of ` 50,000 from Majnu Bhai and consideration for Majnu Bhai paying ` 50,000 to Uday Bhai, is Uday Bhai selling his horse. Here considerations had come at the desire of Promisor. Uday Bhai is a promisor for Majnu Bhai and similarly Majnu Bhai is a promisor for Uday Bhai.

2) Consideration may move from the promisee or any other person: a) Consideration may be furnished even by a stranger under Indian Law. b) Consideration can be from any direction, even a stranger to contract can offer consideration.

Case law: Chinnayya v/s Ramayya

Chinnaya v. Ramaya, (1882) 4 Mad. 137 A lady by a deed (agreement) of gift made over certain property to her daughter directing her to pay an annuity to the donors brother as had been done by the donor herself before she gifted the property. On the same day, her daughter executed in writing in favour of the donors brother agreeing to pay the annuity. Afterwards the donee (the daughter) declined to fulfil her promise to pay her uncle saying that no consideration had moved from him. The Court, however, held that the uncle could sue even though no part of the consideration received by his niece moved from him. The consideration from her mother was sufficient consideration.

1) Consideration must be something of value – Consideration must have some value in the eyes of law, and it should be real.

4) It may be an act, abstinence or a return promise – a) Promise to not to smoke is a negative act (abstinence), b) Promise to not to refer the matter to court (abstinence). c) Promise to perform at the wedding anniversary or birthday party (promise to do).

5) It may be past, present or future which the promisor is already not bound to do – a) According to Indian Law Consideration may be past, present or future. b) But under English Law Consideration may be present or future. Past consideration is no consideration according to English Law

6) It must not be unlawful –

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

- It is forbidden (prohibited) by law;
- or is of such a nature that, if permitted, it would defeat the provisions of any law;
- or is fraudulent;
- or involves or implies injury to the person or property of another;
- or the Court regards it as immoral, or opposed to public policy

NO CONSIDERATION – NO CONTRACT- Section 25

A) Meaning – The general rule is *ex-nudopacto non oritur actio* i.e. an agreement made without consideration is void. Example – If Salman promises to pay Aishwarya ` 1000 without any obligation from Aishwarya then it will be void contract as there is no consideration from Aishwarya towards Salman.

B) Exceptions –

1) Promise made on account of natural love and affection – An agreement made without consideration is valid – a) It is expressed in writing. b) It is registered under the law. c) It is made on account of natural love and affection. d) It is between parties standing in near relation to each other.

2) Promise to compensate for voluntary services – Voluntary service means service done without any request. It will be valid if the following conditions are satisfied – a) The service should have been done voluntarily. b) The service should have been done for the promisor. c) The promisor must have been in existence at the time when the service was done. d) The intention of promisor must have been to compensate the promisee. Exceptions - Under following cases, a contract will be valid even without consideration 1) Promise made on account of natural love and affection 2) Promise to compensate for voluntary services

3) Promise made to pay a time barred debt 4) Completed Gifts 5) Creation of agency 6) Contract of Guarantee 7) Remission) The service rendered must also be legal. Example: Jethalal finds Babita's purse and gives it to her. Babita promises to give Jethalal 50 rupees. This is a valid contract. 3) Promise to pay time-barred debt – a) A promise by a debtor to pay a time-barred debt is also a valid contract. b) But the promise must be in writing. c) It must be signed by the promisor or his authorised agent. d) The promise may be to pay the whole or part of the debt. Example: Ram owes Laxman 1,000 rupees but the debt is barred by the Limitation Act. Ram signs a written promise to pay 500 rupees on account of the debt. The promise will be valid and binding without any fresh consideration.

4) Creation of Agency – a) No consideration is necessary to create an agency. b) Thus, when a person is appointed as an agent, his appointment is valid even if there is no consideration.

5) Completed Gifts – a) Gifts once made cannot be recovered on the ground of absence of consideration. b) Absence of consideration will not affect the validity of any gift already made. Example: Virat gave a watch as a gift to Anushka on his birthday. Later on Virat cannot demand

the watch back on the ground that there was no consideration.

6) Contract of guarantee – Contract of guarantee needs no consideration.

7) Remission – Remission means lesser performance of the contract than what is actually to be performed.

Free consent

A) Meaning – Section 13 ‘Two or more persons are said to consent when they agree upon the same thing in the same sense.’

B) When consent is said to be free?

As per section 14 of the Contract act consent is said to be free when following are absent –

Coercion (Section 15)

Undue influence (Section 16)

Fraud (Section 17)

Misrepresentation (Section 18)

Mistake (Section 20, 21, 22)

Coercion – Section 15

A) Meaning of coercion – Coercion means – a) committing or threatening to commit any act forbidden (prohibited) by Indian Penal Code against another person; or b) unlawful detaining or threatening to detain the property of another person c) with a view to obtain consent of another person

B) Who can exercise coercion – Coercion may come from a person party to the contract or even third person not connected with the contract directly.

C) Important points – a) Prosecution – A mere (only) threat to prosecute a man or file suit against him does not constitute a coercion. b) High prices and high interest Rates – Charging high interest rate, high price etc. is not a coercion as the same is not prohibited under the Indian Penal code. c) A threat to commit suicide – Consent to an agreement may at times be obtained by threatening to commit suicide. Threat to commit suicide also amounts to coercion.

D) What will be the effect if the consent is caused by coercion – Section 19 a) Agreement is

voidable at the option of aggrieved party. b) Aggrieved party has the option to cancel (rescind) the contract. c) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

Undue Influence – Section 16

A) Meaning of undue influence – As per section 14 of the Contract act consent is said to be free when following are absent – -Coercion (Section 15) Undue influence (Section 16) -Fraud (Section 17) -Misrepresentation (Section 18) -Mistake (Section 20, 21, 22) A contract is said to be induced (caused) by “undue influence” where the relations subsisting (existing) between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

B) When a person is deemed to be in a dominating position? a) Where he holds a real or apparent authority over the other (e.g. master and servant) b) where he stands in a fiduciary (trust) relation to the other (e.g. Doctor and patient) 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 (pain) Note – The burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other

C) There is presumption of undue influence in the following relationships – a) Parent and child b) Guardian and ward c) Doctor and patient d) Solicitor and client e) Trustee and beneficiary f) Religious advisor and disciple g) Fiancé and fiancée

D) However, there is no presumption of undue influence in case of relationship of — a) landlord and tenant b) debtor and creditor c) husband and wife.

E) What will be the effect if the consent is caused by Undue influence – Section 19 a) Agreement is voidable at the option of aggrieved party. b) Aggrieved party has the option to cancel (rescind) the contract. c) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person

Fraud – Section 17

A) Meaning of fraud – “Fraud” means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agent, with intent to deceive another party or his agent, or to induce him to enter into the contract:

a) The suggestion, as a fact, of that which is not true by one who does not believe it to be true; a)

The active concealment (to hide) of a fact by one having knowledge or belief of the fact;

- b) A promise made without any intention of performing it;
- c) Any other act fitted to deceive;
- d) Any such act which the law specially declares to be fraudulent

Note – Deceive – intentionally cause (someone) to believe something that is not true
Connivance – willingness for being secretly involved in an immoral or illegal act.

B) Is silence fraud?

- a) Whether silence is fraud or not depends upon various factors.
- b) Normally speaking, silence does not amount to fraud.
- c) However, silence will be considered as fraud in the following situations –
 - When there is a duty to speak
 - Where silence is equivalent to speech.
 - Where there is change in circumstances

C) What will be the effect if the consent is caused by Fraud – Section 19 a) Agreement is voidable at the option of aggrieved party. b) Aggrieved party has the option to cancel (rescind) the contract. c) If aggrieved party decides not to cancel the contract then he may continue the contract and claim damages from the other party. d) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

Misrepresentation – Section 18

A) Meaning – a) A representation when wrongly made either innocently or intentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud. b) Misrepresentation means making any statement as true but actually that statement is false.

B) What will be the effect if the consent is caused by Undue influence – Section 19 d) Agreement is voidable at the option of aggrieved party. e) Aggrieved party has the option to cancel (rescind) the contract. f) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person

Mistake of law of the country –

- 1) When a party enters into a contract, without the knowledge of law in the country, the contract is valid and not void.
- 2) A contract is not voidable because it was caused by a mistake as to any law in force in India.

- 3) The reason here is that Ignorantia juris non excusat (ignorance of law is not an excuse at all).
- 4) However, if a party is induced (influenced) to enter into a contract by the mistake of law then such a contract may be avoided.

Mistake of law of foreign country –

- 1) Such a mistake is treated as mistake of fact and agreement in such case is void.
- 2) Ignorance of foreign law may be excused

Void and Illegal Contracts –

Consequence of Illegal Agreements

- an illegal agreement is entirely void;
- no action can be brought by a party to the contract to an illegal agreement. The maxim is “Ex turpi cause non-oritur action” - from an evil cause, no action arises;
- money paid or property transferred under an illegal agreement cannot be recovered. The maxim is in parti delicto potior est conditio defendentes- In cases of equal guilt, more powerful is the condition of the defendant;
- where an agreement consist of two parts, one part legal and other illegal, and the legal parts is separable from the illegal one, then the Court will enforce the legal one. If the legal and the illegal parts cannot be separated the whole agreement is illegal; and
- any agreement which is collateral (connected) to an illegal agreement is also tainted with illegality and is treated as being illegal, even though it would have been lawful by itself

Agreements Void as being opposed to Public Policy –

The following agreements are void as being against public policy but they are not illegal –

- a) Agreement in restraint (restrict) of parental rights : An agreement by which a party deprives himself of the custody of his child is void.
- b) Agreement in restraint of marriage : An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.
- c) Marriage brokerage or brokerage Agreements : An agreement to procure marriage for reward is void. Where a purohit (priest) was promised Rs.200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promised sum.
- d) Agreements in restraint of personal freedom are void : Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.
- e) Agreement in restraint of trade : An agreement in restraint of trade is one

which seeks to restrict a person from freely exercising his trade or profession.

Void Agreements –

- a) Agreement by a minor (section 11) or a person of unsound mind (section 12).
- b) Agreement of which the consideration or object is unlawful – Section 23
- c) Agreement made under a bilateral mistake of fact material to the agreement – Section 20
- d) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part – Section 24
- e) Agreement in restraint of marriage – Section 26 Agreement in restraint of marriage is void.
Exceptions: a) Minors; b) Restraint for particular reasonable period is valid
- f) Agreement in restraint of trade is void.

Exceptions –

- An agreement through which an outgoing partner will not carry on the business of the firm for a reasonable time will be valid, though it is in restraint of trade
- Where a person sells his business along with the goodwill to another person, agrees not to carry on same line of business in certain reasonable local limits, such an agreement is valid.
- An agreement of service through which an employee commits not to compete with his employer is not in restraint of trade
- Trade Combinations are valid as long as they are not creating monopoly are valid
- g) Agreement in restraint of legal proceedings – Section 28 An agreement which restricts or waives one's right to sue or limits the time of justice is void.

Exceptions: • A contract by which the parties agree that any dispute between them shall be referred to arbitration and will not be taken to the court is a valid contract. h) Agreements void for uncertainty – Section 29 Agreements, the meaning of which is not certain, or capable of being made certain are void

Wagering Agreements –

A) Meaning of wagering agreements – The literal meaning of the word “wager” is a “bet”. Wagering agreements are nothing but ordinary betting agreements. Example – A and B enter into an agreement that if England's Cricket Team wins the test match, A will pay B Rs.100 and if it loses B will pay Rs.100 to A. This is a wagering agreement and nothing can be recovered by winning party under the agreement.

B) Essentials of wagering agreements – a) One party should win and one part should loose b) There should be mutual chance of gain or loss c) No parties should have control over the event.

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Performance of contract Meaning –

- a) Every contract has certain obligations (duties) which are to be performed by the parties to the contract.
- b) When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed.
- c) When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance

Effect of Refusal to accept offer of performance -

Section 38 When the promisor make offer to the promisee for the performance of the contract and promisee does not accept it, then the promisor is not responsible for non-performance

Conditions – 1. It must be unconditional 2. Performance must be at a proper time and place 3. Performance must be within reasonable time. 4. Performance must give reasonable opportunity for inspection

Example: Jay contracts to deliver to Veeru at his warehouse 100 Kg of Basmati rice of A grade quality on the 1st March, 2014,. In order to make an offer of a performance as per section 38, Jay must bring the rice to Veeru's warehouse, on the fixed date (1st March, 2014), under such circumstances that Veeru may have a reasonable opportunity of satisfying himself that the thing offered is Basmati rice of the quality contracted for, and that there are 100 kg of rice.

Effect of Refusal of Party to Perform Promise Wholly - Section 39

- a) If the promisor refuses to perform the contract wholly, the promisee may put an end to the contract.
- b) However, if the promisee has agreed to accept the performance even if it is not performed wholly then the contract will continue.

Example: Kanika Kapoor, a singer, enters into a contract with Neha Dhupia, the manager of a theatre, to sing at his theatre two nights in every week during the next two months, and Neha Dhupia promises to pay her 100 rupees for each night's performance. On the sixth night Kanika willfully absents herself from the theatre. Neha is at liberty to put an end to the contract and it depends on her choice

Effect of accepting performance from third person - Section 41

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Example: Narendra and Rahul enter into a contract in which Narendra will supply raw materials to Rahul. The raw material of Narendra is in Chennai's warehouse which is managed by Mr.

Shah. Narendra gave direction to Mr Shah to deliver raw material to Rahul which Mr Shah did and it was accepted by Rahul. Now, Rahul cannot demand delivery of raw materials from Narendra.

Quasi Contracts – Section 68-72 Meaning of quasi contract –

- 1) It is an implied contract. It is imposed by law and does not arise by agreement
- 2) The duty of a party and not the promise of any party is the basis of such contract.
- 3) It is based on the principle of “prevention of unjust enrichment of one person at the cost of another”
- 4) It is imposed by law and does not arise by agreement.
- 5) No essential of valid contract is required
- 6) The right is available against specific persons and not the whole world

Contingent Contract – Section 31-36

A) Section 31 defines contingent contract as follows – “a contract to do or not to do something if some event, collateral to such contract, does or does not happen” Example – Vasuli Bhai contracts to pay Bappi Bhai 5 lakh rupees if Bappi Bhai’s house is burnt. This is a contingent contract. Contracts of insurance, indemnity and guarantee are also example of contingent contracts.

B) Essentials of Contingent Contract –

- a) There must be a contract to do or not to do something
- b) The performance of the contract depends upon the happening or non-happening of some event in future
- c) The event must be uncertain (not fixed)
- d) The event must be collateral or incidental to the contract

C) Rules regarding contingent contract –

1) Enforcement of contingent contracts on an event happening – Section 32 Contracts which are contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Example: a) Alex promises to pay Peter 5,000 rupees if the ship reaches port. Now, contract will be enforceable (valid) if ship reaches the port. On the other hand if ship does not reaches port then contract will be void. b) Janvi contracts to pay Hitesh a sum of 1 lakh rupees when Hitesh marries Makarand. Makarand dies without being married to Hitesh. The contract becomes void.

2) Enforcement of contracts contingent on an event not happening – Section 33 Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible Example: Alex agrees to pay Peter a sum of 10 lakh

rupees if a certain ship does not return. The ship is sunk. The contract can be enforced after the ship sinks. On the other hand, if ship would have returned the contract would have become void.

3) Contingent Contracts Dependent on future conduct of a living person – Section 34 A contract may be - Absolute contract - it is a type of contract where the promisor promises to perform the contract without conditions. It is also known as unconditional contract Contingent contract is a type of contract where performance is dependant on some conditions which may happen or may not happen. If the future event on which a contract is contingent is dependent on the future act of a living person then contract will become void if that person acts otherwise Example – Sharvi agrees to pay Makarand 1 lakh rupees if Makarand marries Hitesh. Hitesh marries Gaurang. The marriage of Makarand to Hitesh must now be considered impossible, although it is possible that Gaurang may die and that Hitesh may afterwards marry Makarand.

4) When contracts become void which are contingent on happening of specified event within fixed time – Section 35 Contracts which are contingent upon the happening of a future uncertain event within a fixed time will become void if the contract does not happen within fixed time. Example – a) Alex promises to pay Peter 5,000 rupees if the ship reaches port within 1 year. Now, contract will be enforceable (valid) if ship reaches the port within one year. On the other hand, if ship does not reach port within 1 year then contract will be void. b) Alex promises to pay Peter 5,000 rupees if the ship does not reach port within 1 year. Now, contract will be enforceable (valid) if ship does not reach the port within one year. On the other hand, if ship reaches port within 1 year then contract will be void.

5) Agreements contingent on impossible events void – Section 36 Contingent agreements based on impossible event are void. Example – Anuradha promised Shyam to pay 1 crore rupees if he brings Taj Mahal from Delhi to Mumbai. This contract is void contract.

Discharge of contract – Meaning of Discharge of contract – Discharge of contract means termination of contractual relationship between the parties. In simple words discharge of contract means that contract comes to an end.

Modes of discharge of contract

Discharge by performance

Discharge by agreement

Discharge by lapse of time

Discharge by operation of law

Discharge by impossibility of performance

Discharge by breach of contract

A) Discharge by performance –

When the parties to a contract fulfil the obligations arising under the contract within the time and manner prescribed, then the contract is discharged by performance. Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be paid by John on the delivery of the cycle. As soon as it is delivered, John pays the promised amount. Since both the parties to the contract fulfil their obligation arising under the contract, then it is discharged by performance.

B) Discharge by agreement The parties may agree to terminate the existence of the contract by any of the following ways:

1) Novation - Section 62 a) Substitution of a new contract in place of the existing contract is known as “Novation of Contract”. b) It discharges the original contract. c) The new contract may be between the same parties or between different parties. d) Novation can take place only with the consent of all the parties. Example: Raju owes money to Shyam under a contract. It is agreed between Raju, Shyam and Baburao that Shyam should accept Baburao as his debtor, instead of Raju. The old debt of Raju and Shyam is at an end and a new debt from Baburao to Shyam has been contracted. There is novation involving change of parties.

2) Alteration - Section 62 a) Alteration means change in one or more of the terms of the contract. a) In case of novation there may be a change of the parties, while in the case of alteration, the parties remain the same. b) But there is a change in the terms of the contract. c) Alteration can take place only with the consent of all the parties

3) Rescission - Section 62 It means the cancellation of the contract.

4) Remission – Section 63 It means the acceptance of lesser fulfilment of the terms of the promise Example: Salman has borrowed ` 500 from Aishwarya. Salman agrees to accept ` 250 from Aishwarya in satisfaction of the whole debt. The whole debt is discharged.

5) Waiver - Section 63 Discharge by the performance of a contract can be by - Actual performance - Actual performance is when all the parties to a contract do what they had agreed for under the contract Attempted performance - On the other hand, it is possible that when the promisor attempts to perform his promise, the promisee refuses to accept it. In such cases, it is called attempted performance Waiver means giving up or foregoing certain rights. When a party

agrees to give up its rights, the contract is discharged. Example: A promises to paint a picture of B. B afterwards forbids him to do so. A is no longer bound to perform the promise.

C) Discharge of a Contract by Lapse of Time – The Limitation Act, 1963 prescribes a specified period for performance of contract. If the promisor fails to perform and the promisee fails to take action within this specified period, then the promisee cannot seek remedy through law. It discharges the contract due to the lapse of time. Example: Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not pay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

D) Discharge by operation of law –

A contract may be discharged by operation of law in the following cases – 1) Death – a) If contract involves personal skill then contract is discharged b) If contract does not involve personal skill then the rights and liabilities of the deceased person will pass on to his legal representatives. 2) Insolvency – The insolvency of the promisor discharges the contract 3) Unauthorized material alteration – Material alteration in the terms of the contract without the consent of the other party discharges the contract. 4) Merger – When inferior rights of a person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end. Examples: Where a part-time lecturer is made full-time lecturer, merger discharges the contract of part-time lecturer ship.

E) Discharge by breach of contract –

Breach means failure of a party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract. F) Discharge by impossibility of performance – Impossibility of performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible things. Example: A and B wanted to marry each other. Before the time fixed for marriage, A goes mad. The contract becomes void.

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Breach of Contract and Remedies for breach of contract – Section 73-75

Meaning of breach of contract – When a promise or agreement is broken by any of the parties, we call it a breach of contract. So when either of the parties does not keep their end of the agreement or does not fulfil their obligation as per the terms of the contract, it is a breach of contract. Breach of contract can be actual breach or anticipatory breach.

A) Anticipatory Breach of Contract

As the name suggests, an anticipatory breach is a breach of contract before the time of performance. So, if a promisor denies to perform his promise and signifies his unwillingness before the time for performance, then it is an anticipatory breach of contract.

Examples – a) Peter enters into a contract with John on May 30, 2018. In the contract, Peter agrees to sell his house to John provided he receives a token amount of Rs 5,00,000 from John on or before June 30, 2018. However, on June 15, 2018, John informs Peter that he will not be able to provide the token amount on the said date, thereby expressing rejection of the contract.

b) . Peter enters into a contract with John on June 01, 2018. As per the contract, Peter agrees to sell his guitar to John on June 10, 2018, for an amount of Rs 5,000. However, he sells this guitar to Oliver on June 07, 2018. Hence, it is an anticipatory breach of contract due to Peter's conduct. When a promisor refuses to perform his promise leading to an anticipatory breach of contract, the promisee is excused from performance or from further performance of his obligations. Also, he can either: - Treat the contract as cancelled and file a suit against the other party for damages arising from the breach. This suit can be filed immediately without waiting until the date of performance specified in the contract.

OR - Choose not to cancel the contract but treat it as an operative and wait until the time of performance has passed before holding the other party responsible for the damages caused due to nonperformance.

B) Actual Breach of Contract While an anticipatory breach is before the time of performance, an actual breach of contract is on the scheduled time of performance of the contract. An actual breach of contract can be committed either:

1] At the time when the Performance of the Contract is Due Peter enters into a contract with John promising to deliver 50 bags of cotton to him on June 30, 2018. However, on the scheduled day, he fails to deliver the same. This is an actual breach of contract. Also, this breach is at the time the performance of the contract is due.

2] During the Performance of the Contract An actual breach of contract can also occur when one party fails to perform his obligation, during the performance of the contract. This refusal can be expressed in words or by action.

Following are the remedies for the breach of contract –

A) Rescission of Contract When one of the parties to a contract does not fulfil his obligations, then the other party can rescind the contract and refuse the performance of his obligations. As per section 65 of the Indian Contract Act, the party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the party that rescinds the contract is entitled to receive damages and/or compensation for such a recession

B) Sue for Damages Section 73 clearly states that the party who has suffered, since the other party has broken promises, can claim compensation for loss or damages caused to them in the normal course of business. Such damages will not be payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

- Liquidated damages - Sometimes the parties to a contract will agree to the amount payable in case of a breach. This is known as liquidated damages.
- Unliquidated Damages - Here the amount payable due to the breach of contract is assessed by the courts or any appropriate authorities.

C) Sue for Specific Performance This means the party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the party carry out the agreement. So if any of the parties fails to perform the contract, the court may order them to do so. This is a decree of specific performance and is granted instead of damages. For example, A decided to buy a parcel of land from B. B then refuses to sell. The courts can order B to perform his duties under the contract and sell the land to A.

D) Injunction An injunction is basically like a decree for specific performance but for a negative contract. An injunction is a court order restraining a person from doing a particular act. So, a court may grant an injunction to stop a party of a contract from doing something he promised not to do. In a prohibitory injunction, the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

E) Quantum Meruit Quantum meruit literally translates to “as much is earned”. At times when one party of the contract is prevented from finishing his performance of the contract by the other party, he can claim quantum meruit. So he must be paid a reasonable remuneration for the part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

