

CHAPTER 1

BASIC CONCEPTS

Contract: - According to Sec.2 (h) of Indian Contract Act 1872, "An agreement enforceable by law is a contract."

Agreement: - According to Sec.2 (e), "Every promise and every set of promises forming consideration for each other is an agreement."

Promise: - According to 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."

Proposal or Offer: - According to Sec.2 (a), "When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal."

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

Promisor: - The person who promises to do or to abstain from doing something.

Promisee: - The person to whom the promise is made.

Void Agreements: - According to Sec.2 (g), "Agreement not enforceable by law is said to be void agreement."

Void agreements are void *abinitio*.

Void Contracts: - According to Sec.2 (j), "A contract which ceases to be enforceable by law becomes void, when it ceases to be enforceable."

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

Usually a contract becomes voidable when the consent of one of the parties is induced by coercion, undue influence, misrepresentation or fraud. Such a contract is voidable at the option of the aggrieved or injured party.

Illegal Agreements: - Illegal agreement is an agreement to do some act which is expressly or impliedly prohibited by law.

Unenforceable Contract: - An unenforceable contract is one which is valid in itself, but is not capable of being enforced in account of law because of some technical and legal infirmities e.g.; not dated, inadequate stamp, uncertainty or ambiguity etc. or is time barred by the law of limitation.

Essential Elements Of A Valid Contract :-

Following are the essential elements required to make an agreement enforceable by law and become a contract..

1. Plurality of Parties: - There must be two or more persons to an agreement because one person can not enter in to an agreement with himself.

2. An Agreement- Proposal and Acceptance: - There must be a 'lawful offer' and a 'lawful acceptance' of the offer', thus resulting in an agreement. The adjective lawful implies that the offer and acceptance thereof must satisfy the requirements of the Contract Act in relation thereto.

3. Intention to Create Legal Relations: - The parties must have an intention to create legal relations. Generally in social, domestic and political agreements there is no such intention. Generally in social, domestic and political agreements there is no such intention. However in business agreements involving monetary considerations we presume that there is an intention to create legal relations.

Hon. Court will decide about the intention to create legal relations in disputed cases. The Hon. Court will take in to account the facts of the case objectively.

Eg. M promises his wife N to get her a saree if she will sing a song. N sang a song but M did not bring her the saree, N could not bring an action in the Hon. Court to enforce the agreement as it lacked the intention to create legal relations.

Leading Case Law: - Balfour vs. Balfour.

4. Contractual Capacity: - The parties to an agreement must be competent to contract, otherwise it can not be enforced by Hon. Court. In order to be competent to contract the parties must be of the age of majority and of sound mind and must not be disqualified from contracting by any law to which they are subject. [Sec. 11]

5. Free Consent: - Free consent of all the parties to an agreement is another essential element of a valid contract. Consent means that the parties must have agreed upon the same thing in the same sense [13]. There is absence of free consent; if the agreement is induced by (i) coercion; (ii) undue influence; (iii) fraud; (iv) misrepresentation; (v) mistake according to Sec.14.

6. Lawful Consideration and Object: - The presence of consideration is necessary for a valid contract. Consideration is defined by Sec. 2 (d) of Indian Contract Act as "When at the desire of the promisor, promisee or any other person has done or abstained from doing , or, does or abstains from doing, or, promises to do or to abstain from doing, some thing, such act or abstinence or promise is called a consideration for the promise."

But only those consideration and objects are valid which are "lawful". According to Sec.23, the consideration and objects are lawful unless it is forbidden 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 is immoral; or is opposed to public policy.

7. Certainty of Meaning: - According to Sec. 29 of the Act, "Agreements the meaning of which is not certain or capable of being made certain, are void". In order to give rise a valid contract the terms of agreement must not be vague or uncertain.

E.g.; A agrees to sell B "a hundred tons of oil". There is nothing whatever to show what kind of oil was intended. The agreement is void due to uncertainty.

8. Possibility of Performance: - It is another essential element of a valid contract. According to Sec. 56, "An agreement to do an act impossible in itself is void." If the act is impossible in itself, physically or legally, the agreement can not be enforced at law.

E.g.; A agrees with B, to go on Himalayas and discover treasure by magic. The agreement is void.

9. Agreement Should not be Declared as Void: - The agreement must not have been expressly declared to be void u/s 24 to 30 of the Act.

10. Legal formalities: - According to Indian Contract Act oral contracts are perfectly valid. There is no provision for contract being written, registered and stamped. However certain contracts must be written, registered and stamped e.g.; sale of property according to 'Transfer of Property Act'.

All Contracts Are Agreements but All Agreements Are Not Contracts

The statement has two parts:-

(a) All Contracts are Agreements: - As per Sec. 2 (h), "A contract is an agreement enforceable by law." Obviously an agreement is a prerequisite for formation of a contract. An agreement clubbed with enforceability by law and several other features e.g.; free consent, consideration etc. will create a valid contract. Obviously all contracts will be agreements.

(b) All Agreements are Not Contract: - "An agreement is a promise or set of promises which form consideration for each other." A lawful offer and a lawful acceptance create an agreement. However all agreements are not contracts. Some examples are:-

1. Social and religious agreements;
2. Expressly declared void agreements;
3. Agreements without intention to create legal relations;
4. Agreements not combined with essential features of a contract.

Thus all agreements are not contracts. According to Sec. 10, "All agreements are contract if they are made by free consent of the parties competent to contract, for a lawful consideration and lawful object and are not expressly declared as void."

CHAPTER 2

PROPOSAL AND ACCEPTANCE

Proposal: - According to Sec.2 (a), "When one person signifies to another his willingness to do or to abstain from doing anything with a view to obtain the assent of that other to such act or abstinence, he is said to make a proposal."

Features: - A valid offer must be in conformity with following rules..

1. **Two Parties:** - There must be two or more parties because one person can not make a proposal to himself.
2. **A proposal must be the willingness to do a thing or to abstain from doing a thing:** - E.g.; I f X says, "I am willing to sell my bike to you for Rs. 20,000/-." This is a proposal to do a thing.

If X says to Y, "I will pay you Rs. 5,000/- if you will not sue for the next 6 months against me." It is a proposal to abstain from doing a thing.

3. **Proposal must be made with a view to obtain the assent of the other person.**

4. **Proposal must be made to create legal relations.**

5. Proposal must be definite or not vague or ambiguous: - If the terms of the offer are not definite and certain, it does not amount to a lawful offer. According to "L.J. Maugham", "Unless all the material terms of the contract are agreed, there is no binding obligation." E.g.; A offers to sell B 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The offer does not amount to a lawful offer for uncertainty.

6. **Proposal may be 'specific' or 'general':** - An offer is said to be 'specific' when it is made to a definite person. Such an offer can be accepted only by the person or persons to whom it is made, e.g.; if A makes an offer to B to sell his bike for Rs. 15000/-, there is a specific offer B alone can accept it.
A 'general offer' on the other hand, is one which is made to public at large or public in general and maybe accepted by anyone who fulfills the requisite conditions.

Leading Case Law: - *Carlill vs. Carbolic Smoke Ball Co. 1893, 1 Q.B.256.*

7. **Proposal may be 'expressed' or 'implied':** - An offer may be made either by words or by conduct. An offer which is expressed by words, spoken or written, is called an 'express offer' and the one which is inferred from the conduct of a person or the circumstances of the case is called an 'implied offer'. e.g.; **(a)** if A says to B that he will sell his car to him for Rs. 1,50,000/-. This is an 'express offer'

(b) The Roadways Corporation runs omnibuses to different routes to carry passengers at the scheduled fares. This is an 'implied offer' by Roadways Corporation.

8. Proposal and its terms must always be communicated: - A proposal is effective only when it is communicated to the offeree. Until the offer is made known to the offeree, there is no acceptance and no contract. Doing anything in ignorance of offer can never be treated as acceptance, for there was never a consensus of wills. This applies to both specific and general offers.

Leading Case Law: - *Lalman Shukla vs. Gauri Datt, (1913), 11 All.L.J.389.* ;

9. There is a difference between a proposal and an invitation to make a proposal : - A 'proposal' must be distinguished from an 'invitation to receive proposal' In the case of 'invitation to receive proposal, the person sending out the invitation does not make any offer but only invites the other party to make an offer. His object is merely to circulate the information that he is willing to deal with anybody who on such information is willing to open negotiations with him. Such invitations for offer are therefore not offers in the eyes of law and do not become agreement by their acceptance. Some examples of invitation to proposals are; Tenders, Auction notice, prospectus of companies, Price list, Railway time table, display. Etc.

Invitation to Make a Proposal: - Quite often we come across invitations to make proposal. If it is an invitation to make a proposal, the other person makes a proposal in response. The proposal may or may not be accepted. Some good examples are company prospectus, railway time table' auction notices, price list, menu cards display, tender etc.

Tender notice is an invitation to make a proposal. The response to a tender notice is an offer and can be in two ways:-

A definite offer: - When a tender is submitted in response to an invitation for supply of goods and services in specified quantities in a specific and definite manner, it is a definite offer.

A standing offer: - Sometimes a tender is submitted in response to an invitation for supply of goods and services in a continuous way over a period of time, such an offer is a standing or continuous offer. As soon as an order is made a contract is created.

Revocation of Offer: - An offer lapses under the following circumstances

1. **By a clear notice to the offeree:** - An offeror may revoke his offer any time before the acceptance by giving a simple notice of revocation, which can be either oral or written. The offer will lapse if it is revoked.
2. **By lapse of reasonable time [Sec.6 (2)]:** - An offer will lapse after reasonable time or after the expiry of time prescribed. 'What is the reasonable time? is a question of fact.' It will be decided by Hon. Court after taking in to account all the material facts and circumstances of the case.
3. **By non fulfillment of some condition [Sec. 6(3)]:** - When offeror has prescribed some conditions to be fulfilled and offeree fails to fulfill the conditions, offer is dead. An offer may impose conditions such as executing a certain document, or deposition of certain documents, or deposition of certain amount as earnest money.
4. **By death or insanity of the offeror:** - The death or insanity of the offeror must come in to the knowledge of the offeree. The death of the offeror does not automatically revoke the offer.
5. **By a counter offer:** - When there is a counter offer in response to an offer the original offer lapses
6. **By death or insanity of the offeree.**
7. **By destruction of the subject matter.**
8. **By change in law.**
9. If an offer is not accepted according to the prescribed or usual mode, provided the offeror gives notice to the offeree within a reasonable time that the offer is not accepted according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the offer. [Sec.7(2)]

Cross Offer: - When there are two identical offers between two persons, it is a cross offer. A cross offer will not create any contract. One of the offers must be accepted.

Communication of Offer and Acceptance: - Rules regarding the communication of offer and acceptance and their revocation are laid down in Section 4, as follows

1. **Communication of a proposal:** - The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

2. Communication of an acceptance: - The communication acceptance is complete **(a) against the proposer**, when it is put in to the course of transmission and is out of the power of the acceptor; **(b) against the acceptor**, when it comes to the knowledge of the proposer.

3. Communication of revocation: - The communication of revocation is complete **(a) against the person who makes it**, when it is put in to the course of transmission; **(b) against the person to whom it is made**, when it comes to his knowledge.

Time During Which an Offer or Acceptance Can be Revoked: - According to Section 5, "A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer but not afterwards. An acceptance may be revoked at any time before the communication of acceptance is complete as against the acceptor but not afterwards."

Acceptance: - According to Section 2(b), "when the person to whom proposal is made signifies his assent there to, the proposal is said to accepted becomes a promise."

On the acceptance of a proposal, the proposer is called the promisor and the acceptor is called the promisee.

Rules Regarding a valid Acceptance: - A valid acceptance must be in conformity with the following rules –

1. Acceptance must be given only by the person to whom the proposal is made:- An offer can be accepted only by the person or persons to whom the offer is made and with whom it imports an intention to contract ; it can not be accepted by another person without the consent of the offeror.

Leading Case Law: - *Boulton Vs Jones (1857), 157E.R.232*

2. Acceptance must be absolute and unqualified: - Acceptance must be into to if the offeree has attached some condition along with the acceptance and makes any deviation from the terms of the offer; acceptance will be qualified and bad in law. In effect a deviated acceptance is regarded as a counter offer in law.

3. Acceptance must in the prescribed manner and if no manner is prescribed in some usual and reasonable manner: - [Sec.7 (2)]: if the offeror prescribed a mode of acceptance, acceptance must be given according to the mode prescribed, But if the offeror prescribes no mode of acceptance must be given according to some usual and reasonable mode.

If an offer is not accepted according to the prescribed or usual mode. The proposer may within a reasonable time give notice to the offeree that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quite he is deemed to have accepted the acceptance.

4. Acceptance may be given by performing some condition or by accepting some consideration.

5. Acceptance may be 'expressed' or may be 'implied':- An acceptance may be given either by words or by conduct. An acceptance which is expressed by words; spoken or written is called an 'expressed acceptance' and one which is inferred by conduct of the person or by circumstances of the case is called an 'implied' or 'tacit acceptance'. Implied acceptance may be given either by doing some required act or by accepting some benefit of the service.

Leading Case Law: - *Carlill vs. Carbolic Smoke Ball Co. 1893, 1 Q.B.256*

6. Acceptance must be given within a reasonable time and before the offer lapses and/or revoked :- To be legally effective acceptance must be given within the specified time limit, if any , and if no time is stipulated, acceptance must be given within a reasonable time. What is reasonable time? Is a question of fact? It will be decided by Hon. Court after taking into account all the material facts and circumstances of the case.

Again the acceptance must be given before the offer is revoked or lapses.

Leading Case Law: - *Ramsgate Victoria Hotel Co. vs. Montefiore (1866), L.R. 1Ex.109*

7. Acceptance must be communicated by the acceptor: - For a valid acceptance, acceptance must not only be made by the offeree but must also be communicated by, or with the authority of, the offeree to the offeror .

Leading Case Law: - *Powell vs. Lee (1908), 99L.T.284.*

8. 'Acceptance subject to contract' is no acceptance.

9. Silence is no acceptance: - Silence does not amount to acceptance. If offeree does not respond to offer or keeps quite, the offer will lapse after reasonable time. The offeror can not compel the offeree to respond offer or to suggest that silence will be equivalent to acceptance.

CHAPTER 3

CONTRACTUAL CAPACITY

According to Sec.11 of 'Indian Contract Act 1872', "Every person is competent to contract, who is of age of majority according to law to which he is subject, and who is of sound mind, and is not disqualified from contracting by any law to which he is subject." Thus, the Section 11 declares that a person is incompetent to contract under the following circumstances: ~

7. If he is a minor according to the law to which he is subject;
8. If he is of unsound mind;
9. If he is disqualified from contracting by any law, to which he is subject.

4. Minor

According to Sec. 3 of Indian Majority Act-1875, "A minor is a person who has not completed 'eighteen years' of age. However, minority will continue up to 'twenty one years' in case if Hon. Court has appointed guardian for a minor's property."

Rules Regarding Agreement by a Minor → A minor is incompetent to contract u/s 11 of the Act. Minor's incompetence is not a punishment but it is a protection given to minors by law. The law becomes the guardian of minors to protect their rights because their mental capacity is not well developed. The following rules regarding minor's agreement are important: -

(1.) An agreement by minor is absolutely and ab-initio void: - Where a minor is charged with obligations and the other contracting party seeks to enforce these obligations against minor, the agreement is deemed void ab-initio.

Leading Case Law: - *Mohari Bibi vs. Dharmo Das Ghosh, (1903), I.L.R.30 Cal.539.*

(2.) Minor can be a beneficiary or promisee: - Any agreement which is of some benefit to the minor and under which he is required to bear no obligation is valid. Thus, a minor can be a beneficiary e.g.; a payee, or a promisee under a contract. Money advanced by a minor can be recovered by him by a suit because he can take benefit under a contract.

(3.) 'The Doctrine of Ratification' does not apply in the case of minority: - An agreement by minor is ab-initio void and therefore ratification by minor is not allowed. There is a fundamental principle in law i.e.; an agreement void ab-initio cannot be validated by subsequent action.

(4.) Restitution of benefit: - a minor cannot be ordered to make compensation for a benefit obtained in a void agreement u/s 64 and 65 of Contract Act. Because section 64 and 65, which deals with restitution of benefit, apply only to contracts between competent parties and are not applicable to a case where there is not and could not have been any contract at all (*Mohari Bibi vs. Dharmo Das Ghosh*).

However, minor cannot be permitted to cheat others or take undue advantage in an agreement under the 'doctrine of justice and equity'. The law has to take care of the interest of the third persons also. The Hon. Court can compel the minor u/s 33 of the Special Relief Act, 1963 to restitute the benefit when he is a plaintiff.

(5.) 'Doctrine of Estoppel' does not apply in the case of minor: - Section 115 of Indian Evidence Act explains "Estoppel" as follows, "When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representatives shall be allowed, in any case or proceeding between himself and such person or his representatives, to deny the truth of that thing." This rule of Estoppel does not apply in case of minor.

(6.) Minor's guardian can contract on behalf of minor, for the benefit of the minor: - a contract entered in to, on behalf of a minor by his guardian, is binding on the minor and can be expressly enforced by or against the minor, provided, (a) the contract is within the authority of the guardian; and

(b) it is for the benefit of the minor.

(7.) Minor partner: - A minor being incompetent to contract cannot be a partner of a partnership firm, but u/s 30 of the Indian Partnership Act; he can be admitted for the 'benefits of partner ship' with the consent of all the partners by an agreement executed through his lawful guardian with the other partners.

(8.) Minor agent: - A minor can be an agent. It is so because the act of the agent is the act of the principal and therefore the principal is liable to he third parties for the act of a minor agent.

(9.) Minor's liability for necessities: - Minor's estate is liable for necessities supplied to minor during minority. Minor does not personally liable for the supply of necessities.

According to section 68 of the Act, *"if a person, incapable of entering into a contract, or any one 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."*

There are two essentials:-

10. The things supplied must be necessities of life e.g.; fooding; housing; education; entertainment; medical attendance; cost of defending minor in civil and criminal proceedings etc.

11. The things supplied must be suited to his condition in life.

5. Person of Unsound Mind

According to Section 12 of the Indian Contract Act, 1872, *"A person is said to be of sound mind for the purpose of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests."*

Tests of soundness: - There are two tests for soundness of mind

10. Ability to understand the contract at the time of making.

11. Ability to take a rational judgment about the effect of the contract on his interests.

Unsoundness may arise from idiocy, lunacy, drunkenness, hypnotism, mental decay because of old age and delirium (unsoundness due to high temperature) etc.

A person who is usually of sound mind and occasionally of unsound mind cannot contract when he is of unsound mind.

A person who is usually of unsound mind and occasionally of sound mind can contract when he is of sound mind.

The burden of proof will lie upon the person who claims that he was not of sound mind at the time of making a contract.

(C) Persons Expressly Disqualified

The following persons are disqualified from contracting:-

Alien enemy, foreign sovereigns, ambassadors, insolvent, convict.

CHAPTER 4

FREE CONSENT

Consent: - According to Section 13 of the Indian Contract Act, 1872, *"Two or more persons are said to consent when they agree upon the same thing in the same sense."*

Thus consent requires identity of minds or *consensus ad-idem* i.e.; agreeing upon the same thing in the same sense.

If there is no *consensus ad-idem*, there is no real consent and hence no valid contract.

Free Consent: - According to Section 14, "Consent is said to be 'free' when it is not caused by:

6. Coercion as defined by section 15, or
7. undue influence, as defined in section 16, or
8. Fraud as defined in section 17, or
9. Misrepresentation in section 18, or
10. Mistakes, subject to the provisions of sections 20, 21 and 22."

Coercion [Section 15]

According to section 15, "Coercion is the committing or threatening to commit, any act forbidden by 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."

Leading Case Law: - *Chikkam Ammiraju vs. Chikkam Sheshamma, (1917), 41, Mad.33*: - In this case a person, by threat to commit suicide, induced his wife and son to execute a release deed. The transaction was set aside on the grounds of coercion.

Comments: - The definition of coercion laid down in section 15 can be analyzed as follows: -

1. Coercion implies committing any act forbidden by the Indian Penal Code.
2. Coercion implies threatening to commit any act forbidden by the Indian Penal e.g.; threat to shoot, murder, intimidation, threat to cause hurt, defamation etc. are the acts forbidden by Indian Penal Code.
3. Coercion implies unlawful detaining the property of other person.
4. Coercion implies threatening to detain the property of another person.
5. Coercion may be exercised by the party or the any other person who is stranger to the contract.
6. Coercion may be directed against the party or any other person e.g.; wife; children etc.
7. The place of coercion is immaterial. The explanation to section 15 clearly says that, it does not matter whether the Indian Penal Code is or is not in force in the place where the coercion is employed. If the suit is filed in India section 15 will apply.

Is Following Coercion: -

1. **Threat to commit suicide:** - Suicide is forbidden under I.P.C. however threat to commit suicide is another issue. This has created controversy from time to time Madras and Calcutta High Court have held that threat to commit suicide is coercion [Chikkam Ammiraju vs. Chikkam Sheshamma]. The Hon. Supreme Court of India has finally settled this controversy and ruled that threat to commit suicide falls u/s 15 i.e.; coercion.
 2. **Threat to sue:** - To threaten a criminal or civil prosecution does not constitute coercion, because filing a suit is not forbidden by Indian Penal Code. But a threat to file a suit on a false charge constitutes coercion, for such an act is forbidden by I.P.C.
 3. **Threat to strike:** - The right to strike and make demonstration in favour of demands is sanctioned and is not forbidden by I.P.C. Therefore threat to go on strike is not an offence under I.P.C. and coercion u/s 15.
- Burden of proof:** - The burden of proof that the coercion was used lies on the party who wants to set aside the contract on the grounds of coercion.

Undue Influence [Section 16]

Section 16 (1) defines 'Undue influence' as follows, "A contract is said to be induced by undue influence, where, the relations subsisting between the parties are such that one party is in a position to dominate the will of the other, and he uses the position to obtain an unfair advantage over the other."

Thus there are two essentials: -

1. One party is in the position to dominate the will of the other.
 2. He uses that position to obtain an unfair advantage.
- According to section 16 (2), A person is said to be in the position to dominate the will of the other

12. Where he holds a real or apparent authority over the other, e.g.; the relationship between master and servant, police officer and accused; or
13. Where he stands in a fiduciary relation to the other. Fiduciary relation means a relation of mutual trust and confidence e.g.; a relation between father and son, Guru (spiritual advisor) and disciple etc.; or
14. Where he makes a contract with a person whose mental capacity is affected permanently or temporarily by reason of age, illness or mental or bodily distress.

Burden of proof [Section 16(3)]: - It lies upon the person who was in the position to dominate the will of the other.

Unconscionable Transaction: - Unfair or unreasonable bargains belong to the category of 'unconscionable transactions'. These are such transactions where as between two contracting parties; one is in a dominant position and makes an exorbitant profit of the other's distress.

If the transaction is unconscionable the Hon. Court will examine the case carefully to decide whether the consent is free or induced by undue influence under section 16.

Distinction between Coercion and Undue Influence

Base	Coercion	Undue Influence
Meaning	Coercion means committing or threatening to commit any act forbidden by I.P.C. or unlawful detaining or threatening to detain the property of another with the intention of causing any person to enter in to an agreement.	It is an influence which arises due to relations where one party is in a position to dominate the will of the other.
Relations	The relations between parties are immaterial.	Some sort of relationship is absolutely necessary between parties
Criminal Act	It involves a criminal act	No criminal act is involved

Fraud [Section 17]

According to 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 intent to deceive the other party and to induce him to enter into a contract.***

- The suggestion that a fact is true when it is not true by one who does not believe it to be true.***
- The active concealment of a fact by a person who has knowledge of the fact.***
- A promise made without any intention to perform it.***
- Any other act fitted to deceive:*** - The fertility of man's invention in devising new schemes of fraud is so great that it would be difficult, if not impossible, to confine fraud within the limits of any exhaustive definition. All surprise, trick, cunning, dissembling, and other unfair way that is used to cheat anyone is considered fraud and subsection (4) is obviously intended to cover all those cases of fraud which cannot appropriately be covered by the other subsections.
- Any such act or omission as the law specially declares to be fraudulent:*** - This subsection refers to the provisions in certain Acts, which make it obligatory to disclose relevant facts. An omission to make such a disclosure amounts to fraud.

Is Silence Equivalent to Fraud

Generally silence is not fraud. The explanation to Section 17 clearly states that, mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

However if the circumstances are such that it is the duty of the person, keeping silence to speak, his silence will be equivalent to speech. Here silence is fraud.

If parties stand in fiduciary relationship it is the duty of the person to speak all the material facts e.g.; relation between father and son, promoter and company, insurance contracts etc.

Misrepresentation

According to Section 18 'Misrepresentation' means and includes: -

- (a) 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; or
- (b) Any breach of duty which, without any intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another.
- (c) When a party causes, however innocently, the other party to the agreement to make mistake as to the substance of the thing which is the subject of the agreement.

Distinction between 'Fraud' and 'Misrepresentation'

S. No.	Base	Fraud	Misrepresentation
1.	Meaning	Fraud is intentional misrepresentation or active concealment to induce other party to enter into contract.	It is the innocent misrepresentation of material facts to induce the other party to enter into contract.
2.	Object	Fraud is committed with an intention to deceive the other party.	There is no intention to deceive.
3.	Falsehood of statement	The person making the false statement knows or believes the truth.	The person making the false statement genuinely believes it to be true.
4.	Rights	Fraud is a civil wrong which entitles a party to claim damages in addition to the right of rescinding the contract.	Misrepresentation gives only the right to avoid the contract and there can be no suit for damages.
5.	Effect on the contract	In case of fraud, except fraud by silence, the contract is voidable, even though the party defrauded had the means of discovering the truth with ordinary diligence.	In the case of misrepresentation the fact that the party can become aware of the truth by using ordinary diligence will prevent the party from avoiding the contract.

Mistake [Sec. 20, 21 and 22]

Mistake of fact [Sec. 20]: - Where both the parties to an agreement are under a mistake as to matter of fact essential to the agreement, the agreement is void.

Leading case Law: - *Courturier vs. Hastie (1856); 10 E.R. 106.*

A, agrees to sell B a specific cargo of goods supposed to be on its way from England to Bombay. It turns out that, before the day of the bargain the ship conveying the cargo had been cast away, and the goods lost. Neither party was aware of these facts. The agreement is void.

Mistake of Law [Sec. 21]: - A contract is not avoidable because it was caused by a mistake to any law in force in the country. There is a common law; "*Ignorantia juris non excusat*" means that ignorance of law is no excuse.

Mistake of foreign law stands on the same footing as the mistake of fact.

Mistake of fact is of two types: -

12. Bilateral Mistake: - Where both the parties to an agreement are under mistake as to a matter essential to the agreement, there is a bilateral mistake. Such an agreement is void u/s 20.

13. Unilateral Mistake [Sec. 22]: - "A contract is not voidable, merely, because it was caused by one of the parties being under a mistake as to a matter of fact."

An erroneous opinion as to the value of a thing which forms the subject matter of the agreement is not to be deemed as a mistake as to a matter of fact.

Effect on the Validity of the Contract [Section 19]

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

However Sec. 19 does not suggest what happens if a contract is induced by undue influence. The Hon. Court has discretionary powers. If one of the parties' consent is caused by undue influence, the Hon. Court can make any one of the following orders: -

1. Contract is absolutely rescinded.
2. the contract is voidable at the option of the aggrieved party.
3. The contract may be performed on such terms and conditions which the Hon. Court thinks fit.

CHAPTER 7

CONTINGENT CONTRACTS

According to Section 31 of the Indian Contract Act, 1872, "A contingent contract is a contract to do or not to do something, if some event, collateral to such contract does or does not happen."

Thus it is a contract the performance of which is dependent upon the happening or non-happening of an uncertain future event, collateral to such contract.

e.g.; (a). A promises to pay B Rs. 50,000/- to B, if a certain ship does not return, of course after charging usual premium.

(b). A promises to pay Rs. 10,000/-, if B's house is burnt.

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

As the performance of is made dependent upon a contingency, contingent contracts are also known as 'conditional contracts'.

Collateral Events: - The collateral event is one which does not form part of consideration of the contract and is independent of it.

Essentials of a Contingent Contract: - Following are the essentials of a contingent contract: -

15. Contingent contracts depend upon a contingency i.e. happening or non-happening of a future uncertain event.
 16. The future uncertain event is collateral i.e., incidental to the contract.
 17. The event should not be merely the mode of the performance.
 18. The event should not be merely the wish or happiness of the promisor.
- Thus contingent contract is simply a conditional contract whose performance is contingent upon the happening or non-happening of an uncertain future event.

Rules Regarding Performance of A Contingent Contract:-

1. Contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contract becomes void. [sec.32]

e.g.; (a). A makes a contract with B to buy B's horse if A survives C. The contract can not be enforced by law unless and until C dies in A's life time.

(b). a contracts to pay B a sum of money (a loan) when B marries C, C dies without being married to B. The contract becomes void.

2. Contingent contracts to do or not to do anything, if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible and not before.[Sec. 33]

e.g.; A agrees to B a sum of money (as insurance claim), if a certain ship does not return(of course after charging premium). The ship is sunk. The contract can be enforced when the ship sinks.

3. If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does any thing which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies. [Sec.34]

e.g.; A agrees to pay b a sum of money (as loan) if B marries C. C marries D. The marriage of B to C must now be considered impossible, although it is possible that D may die and that C may afterwards marry B. [If later B actually marries C (the D's widow), it will not revive the old obligation of A to pay the sum, because that came to an end when C married D].

4. 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 the time fixed, such event does not happened, or if, before the time fixed such event becomes impossible. [Sec. 35(1)]

e.g.; A promises to pay B a sum of money if a certain ship returns within a year. The contract may be enforced if the ship returns within a year and becomes void if the ship burnt within a year or if the ship does not return within a year.

5. Contingent contracts to do or not to do any thing 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. [Sec. 35(2)]

e.g.; A promises to pay B a sum of money (as insurance claim), if a certain ship does not return within a year. The contract may be enforced if the ship does not return within the year, or is burnt within the year.

6. Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility is known or not to the parties to the agreement at the time when it is made. [Sec.36]

e.g.; A agrees to pay B Rs. 1,000/- (as a loan) if two straight lines should enclose a space. The agreement is void.

Distinction Between Wagering Agreement and Contingent Contract

S. No.	Wagering Agreement	Contingent Contract
1.	In a wagering agreement a person agrees to pay money to other person upon happening or non-happening of a specified event.	Contingent contract is contract in which promisor undertakes to perform the contract upon happening or non-happening of an uncertain collateral event.
2.	Wagering agreement is void u/s 30.	Contingent contract is perfectly valid u/s 31.
3.	The uncertain event is the sole determining factor of the agreement.	The future uncertain event is merely collateral.
4.	In a wager the parties are not interested in the occurrence of the event except for the winning or losing the bet amount.	The parties have real interest in the occurrence or non occurrence of the event.
5.	Generally it is a reciprocal promise.	There may be an unilateral promise.

CHAPTER 5

CONSIDERATION

According to Section 2 (d) of the Indian Contract Act, 1872, “ *When at the desire of the promisor, promisee or any other person has 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 the consideration for the promise.*”

Essentials of Valid Consideration: - The following are the essentials of a valid consideration: -

1. Consideration must move at the desire of the promisor: - In order to constitute a legal consideration, the act or abstinence forming the consideration for the promise must move at the desire or request of the promisor. Thus acts done or services rendered voluntarily, or at the desire of the third party, will not amount to valid consideration so as to not support a contract.

Leading Case Law: - *Durga Prasad vs. Baldeo (1881), 3 All. 221*

2. Consideration may move from the promisee or any other person: - According to section 2(d), Consideration need not move from the promisee alone but may move from a third person also. Thus, as long as there is a consideration for a promise, it is immaterial who has furnished it. This means that even a stranger to a contract can sue on a contract, provided he is a party to the contract. This sometimes called as ‘Doctrine of Constructive Consideration’

But in English Law consideration must move from the promisee.

Leading Case Law: - *Chinnayya vs. Ramayya (1881), 4 Mad, 137:* - A, an old lady, by a deed of gift, made over certain property, to her daughter R, with a direction to pay an annuity to A’s brother C. Accordingly, on the same day r executed a writing in favor of C, agreeing to pay the annuity. Later on she declined to fulfill her promise on the ground that no consideration had been moved from her maternal uncle. It was held that, a stranger to the consideration might maintain a suit. Hence C, though, a stranger to the consideration (as the consideration indirectly moved from his sister) was entitled to maintain a suit.

3. Consideration may be past, present or future: - The words used in section 2 (d),..... has done or abstained from doing (past), or does or abstains from doing, or promises to do or abstain from doing Means consideration may be past, present or future.

(i) Past consideration: - When consideration by a party for a present promise was given in the past, i.e.; before the date of the promise, it is called ‘past consideration’. However in England past consideration is not valid.

Leading Case Law: - *Sindha vs. Abraham (1895). 20 Bom. 755*

(ii) Present Consideration: - Consideration which moves simultaneously with the promise, is called ‘present consideration’

(iii) Future Consideration: - When the consideration on both sides is to move at a future date, it is called ‘future consideration’ or ‘executory consideration’. It consists of exchange of promises and each promise is a consideration for the other.

4. Consideration need not be adequate: - The consideration need not be adequate to the promise for the validity of the agreement. The law only insists on the presence of the consideration and not on its adequacy (*Bolten vs. Modden*).

According to explanation 2 to section 25 of the Indian Contract Act-1872, an agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate, but the inadequacy of the consideration may be taken in to the account by the Hon. Court in determining the question whether the consent of the promisor was freely given.

5. Consideration must be real something of value and not illusory: - Though consideration need not be adequate, it must be real and of some value in the eyes of law. Again an illusory and deceptive consideration does not amount to a valid consideration. Consideration is illusory if it consists in a promise to perform a public duty, or to perform a contract already made with the promisor.

6. Consideration must be lawful: - Only those considerations are valid which are lawful. According to Section 23 *the consideration and objects are lawful unless it is forbidden 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 is immoral; or is opposed to public policy.*

'Doctrine of Privity of Contract' or Stranger to a Contract can not Sue

It is a well settled law that a stranger to a contract can not sue. This is based on the 'Doctrine of Privity of Contract'. Which means that a contract is a private relationship between the contracting parties and there is no place for a stranger e.g.; if X and Y contracts with each other Z has no locus in the contract, only X and Y can enforce the contract. (*Jamuna Das vs. Ram Autar*)

However stranger to consideration can sue. Sec 2(d) of the Contract Act defines consideration and clearly says that the consideration may move from the promisee or any other person. This means that even a stranger to the consideration can sue on a contract, provided he is a party of the contract this sometimes called 'Doctrine of Constructive Consideration'.

We can draw the following conclusions: -

1. A stranger to a contract can not sue.
2. A stranger to the consideration can sue.

Exceptions: - The following are the rules where a stranger to the contract can sue

1. **Trust or Beneficiary:** - In a trust deed beneficiaries may sue even though they are not contracting party. However, the name of the beneficiary must be clearly mentioned.
2. **Marriage, settlement, partition or other family arrangements:** - When an arrangement is made in the connection with marriage, partition or other family arrangements And a provision is made for the benefit of a person, he may sue although he is not a party to the agreement.
3. **Assignment:** - Assignment means voluntary transfer of the rights by a person to another. The assignee becomes entitled to sue and enforce the rights which are assigned to him.

Unlawful Consideration and Objects

According to section 23, the consideration and objects are lawful unless:-

1. **It is forbidden by law:** - If the consideration or object of a promise is such as is forbidden by law, the agreement is void. An act is forbidden by law if:

(a). It is punishable under the criminal law of the country; or

(b). It is prohibited by special legislations and regulations made by competent authority under power derived from legislature. E.g.; Agreements for sale or purchase above the standard price fixed by the relevant law (e.g.; Essential Commodities Act, 1955) with regard to a controlled article are illegal and hence void.

2. **If it is of such a nature that if permitted it would defeat the provisions of any law:** - If the object or consideration of an agreement is of such a nature that, though not directly forbidden by law, it would indirectly tend to a violation of law, whether enacted or otherwise. Such an agreement is void. e.g.; An agreement between husband and wife to live separately is invalid as being opposed to Hindu law.

3. **If it is fraudulent:** - An agreement, whose object or consideration is to defraud others, is unlawful and hence void. E.g.; A, B, and C enter into an agreement for division among them of gains acquired or to be acquired, by them by fraud. The agreement is void, as its object is unlawful.

4. **If it involves or implies injury to the person or property of another:** - If the object or consideration of an agreement is injury to the person or property of another, it is void, being an unlawful agreement.

E.g.; (i). An agreement to commit an assault or to beat a person has been held unlawful and void.

(ii). An agreement to put certain property to fire is unlawful and void under this clause.

(iii). An agreement involving the publication of libel (defamatory Article against some one) has been held unlawful and void.

5. If the court regards it as immoral: - An agreement, whose consideration and object is immoral, is illegal and void. The word immoral includes: -

(i). Sexual immorality e.g.; illicit cohabitation or concubinage or prostitution

CHAPTER 8

PERFORMANCE OF CONTRACT

Modes of termination of a contract: - A contract may be terminated

19. By performance;
20. by performance becoming impossible;
21. by death or insanity of the promisor;
22. By rescission;
23. By novation;
24. By remission;
25. By accord or satisfaction;
26. By operation of law;
27. By breach of the contract.

Performance: - Performance of a contract means carrying out the promises and obligations undertaken by the parties according to the terms prescribed in the contract.

Offer or tender of performance [Sec. 38]: - When promisor has made a valid offer of performance to the promisee and offer had not been accepted by the promisee, the promisor is not responsible for non performance and he does not lose any rights under the contract.

A valid tender of performance is equivalent to performance. It is called attempted performance.

Valid offer of performance: - The following conditions must be fulfilled:-

4. It should be unconditional.
5. It should be made at proper time.
6. It should be made at proper place.
7. If it is an offer to deliver something, the promisor must give a reasonable opportunity to the promisee of inspecting that the thing offered is the thing which promisor is bound to deliver under the contract.

By whom the contract must be performed

3. Performance by promisor himself [Sec. 37 clause 1]: - The parties to a contract must either perform or offered to perform their respective promises unless such performance is excused under the provisions of this Act or the provisions of any other law.

4. Performance by legal representatives: - Promises bind the legal representatives of the promisors in case of the death of the promisor before the performance unless a contrary intention appears from the contract.

Generally the representatives of the promisor are bound to perform the promises in case of death of promisor before performance. However, the above rule will not apply if the personal skill is involved in the performance of the contract e.g.; singer, painter, actor, architect, doctor, advocate etc. [Sec. 37 clause 2]

5. **Performance by promisor or his agent [Sec.40]:** - If it appears from the nature of case that it was the intention of the parties that promisor himself should perform, then, promisor should perform the promise himself. In other cases the promisor or his representatives may perform the promise. The correct interpretation of sec. 40 is that the intention of the contracting parties is supreme. How to ascertain the intention? The golden rule suggests that if performance of the contract involves personal skills, the promisor himself should perform.
6. **Performance by a third person:** - Sec. 41 lay down that if a promisee accepts performance of the promise from a third person, he can not afterwards enforce it against the promisor. Notice that under this section performance of promise by a stranger, once accepted by the promisee discharges the promisor, although the latter has neither authorized nor ratified the act of the third party.
7. **As per Sec 67,** "If any promisee neglects or refuses to afford reasonable facilities for performance of the promise to promisor, the promisor is excused for non-performance."

By whom Joint Promises must be performed: - The rules on the subject are contained in sections 42 to 44 of the Contract Act,

14. **All promisors must jointly fulfill the promise [Sec. 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. When any of the joint promisors dies his legal representatives must, jointly with the surviving promisors fulfill the promise. On the death of all the original promisors, the legal representatives of all of them must jointly fulfill the promise.
15. **Anyone of the joint promisors may be compelled to perform:** - When two or more persons make a joint promise, the promisee is entitled, in the absence of express agreement to the contrary, to compel any one or more of such joint promisors to perform the whole of the promise. [Sec. 43 para 1] According to the section the liability of joint promisors is "joint and several" as against the promise, unless there is a contract to the contrary. e.g.; A, b, and C jointly promise to pay D Rs. 3,000/- D may compel either A or B or C or all or any two of them to pay him Rs. 3,000.
16. **Right of contribution inter-se between joint promisors:** - If one of several joint promisors is made to perform the whole contract, he may require equal contribution from the other joint promisors, unless a contrary intention appears from the contract [Sec 43 Para 2]
- e.g.; In the above example if A is compelled to pay the entire amount of Rs. 3,000/-, he can realize from B and C Rs. 1,000/- each.
17. **Sharing of loss by default in contribution:** - if any one of the joint promisors makes a default in making contribution, if any, the remaining joint promisors must bear the loss arising from such default in equal shares. [Sec. 43 para 2].
18. **Effect of release of one joint promisor:** - In case of joint promise, if one of the joint promisors is released from his liability by the promisee, his liability to the promisee ceases but this does not discharge the other joint promisors from their liability; neither does it free the joint promisor so released from his liability to contribute to the other joint promisors. [Sec. 44]

Rights of Joint Promisees: - According to Sec. 45, when promise is made to several persons jointly, then, unless a contrary intention appears from the contract, the right to claim performance rests with all the promisees jointly and a single promisee can not demand performance. When any one of the promisees dies, the right to claim performance rests with the legal representatives of such deceased person jointly with the surviving promisees. When all the promisees are dead, the right to claim performance rests with the legal representatives of all jointly.

Time and Place of Performance: - Section 46 to 50 of the Contract Act lay down the rules regarding the time and place for performance of the contract, which are as follows..

11. When a promisor has to perform his promise *without application by the promisee and no time for performance is specified*, the engagement must be performed within reasonable time.
What is a reasonable time? is a question of fact in each particular case.
[Sec.46]
12. When a promise is to be *performed on a certain day without application by promisee*, the promisor may perform the promise at any time during the usual working hours on such day. [Sec. 47]
13. When a promise is to be *performed on a certain day upon an application by the promisee*, it is the duty of the promisee to apply for performance during the usual business hours. [Sec. 48]

14. When a promise is to be *performed without application by the promisee and no place is fixed for the performance*, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise and perform the promise at such place. [Sec. 49]

15. The performance of any promise may be made in any manner or at any time which the promisee prescribes or sanctions.[Sec. 50]

Performance of Reciprocal Promises: - According to Sec. 2 (f) of Indian Contract Act, "Promises which form consideration or part of consideration for each other are called reciprocal promises."

Section 51 to 54 of the Contract Act lay down the rules regarding the order of performance of reciprocal promises; which are as follows...

1. Simultaneous performance of reciprocal promises: - Where the promises are to be performed simultaneously, they are said to be 'mutual and concurrent'. According to Sec. 51, in the case of such promises the promisor need not perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

E.g.; A and B contract that A shall deliver goods to B to be paid for by B on delivery. Here the promises are 'mutual and concurrent' and therefore A need not deliver goods, unless B is ready and willing to pay for the goods on delivery; and B need not to pay for the goods, unless A is ready and willing to deliver them on payment.

2. When the order of performance is fixed by implication: - According to Sec. 52, where the order in which the reciprocal promises are to be performed is expressly fixed in the contract, they must be performed in that order. Where the order is not expressly fixed, they must be performed in that order which the nature of transaction requires.

e.g.; A and B contracts that A shall build a house for B at a fixed price. A's promise to build the house must be performed before B's promise to pay for it.

3. Consequences where a party prevents performance: - according to Sec. 53, "When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non performance of the contract."

e.g.; A and B contract that B shall execute certain work for A for Rs. 1,000/-. B is ready and willing to do the work accordingly, but A prevents him from doing so. The contract becomes voidable at the option of B, and if he elects to rescind it, he is entitled to recover from A, compensation for any loss which he has incurred by its non performance.

Leading Case Law: - '*O' Neil vs. Armstrong (1895)*

4. Effect of default as to promise to be performed first : - According to Sec. 54, where the performance of promise by one party depends on the prior performance of the promise by the other party, if the promisor who is required to perform his promise in the first place, fails to perform it, such promisor can not claim performance of the reciprocal promise, and must make compensation to the other party to be contract for any loss, which such other party may sustain by the non performance of the contract.

e.g.; A promises to B to sell him one hundred bales of merchandise to be delivered next day, and B promises A to pay for them within a month. A does not deliver according to his promise. B's promise to pay need not be performed and A must make compensation to B.

Time as Essence of the Contract

In the performance of a contract, time is a crucial element. Contracts must be performed on time. 'Is time of essence?' is a question of fact and law.

Sec. 55 of Indian Contract Act provides the effect of failure to perform at a time fixed in a contract in which time is essential, as follows..

(a) When time is of essence: - If the promisor fails to perform on an agreed or specified time, the contract will become voidable at the option of the promisee.

(b) When time is not of essence: - If the promisor fails to perform within a specified time, the contract will not become voidable at the option of the promisee. It means that in such a case the promisee can not rescind the contract and he will have to accept the delayed performance. But the promisee is entitled to claim the compensation for any loss caused to him by the delay. However the promisor should not delay the performance beyond a reasonable time, otherwise the contract will become voidable at the option of the promisee.

If promisee accepts the delayed performance and intends to sue the promisor for compensation for delayed performance, promisee must give a notice oral or written to the promisor regarding his intention.

When is the time essence of the contract: - "Time is of the essence of the contract", (i) if the parties to the contract have expressly agreed to treat it as such; or (ii) if the nature of transaction or intention of the parties were such that the performance within a limited time was necessary. Even where a time is specified for the performance of a certain promise, "time may not be of the essence of the contract" and one has to look at the nature and construction of the contract and the intention of the parties in order to ascertain whether "time is of the essence of the contract" or not. It is well settled that unless a different intention appears from the terms of the contract, ordinarily in commercial contracts the time of delivery of goods is of the essence of the contract but not the time of payment of the price. This is so because there are great chances of rapid marked fluctuations and also because after entering into a contract the businessman, on that basis, may enter in to other contracts with other persons which can not be fulfilled unless he receives the delivery of goods under the contract. In contracts for the purchase of land, usually time is not of the essence of the contract because land values do not frequently fluctuate.

Termination of contract by Impossibility OR Doctrine of Frustration OR Doctrine of Supervening Impossibility: - Section 56 of Contract Act deals with impossibility. Impossibility is of two types:-

6. Impossibility at the time of the contract:- Section 56 para 1 provides, "An agreement to do an act impossible in itself is void." If the parties are interested in to an agreement to perform something which is obviously impossible, e.g.; an agreement to discover treasure by magic, the agreement is void ab-initio. Thus para 1 of Sec.56, speaks of something which is impossible inherently or by its nature and which may or may not be known to both the parties.

(1.) If impossibility is not known to the parties: - If at the time of the contract both the parties know that the performance of the contract is not possible, the agreement becomes void.

(2.) If impossibility is not known to the parties: - If both the parties do not know about the impossibility the agreement is void.

(3.) If impossibility is known to the promisor only: - If the impossibility of the contract is not known and the promisor alone knows of the impossibility then existing, or, the promisor might have known as such after using reasonable diligence, such promisor is bound to compensate the promisee for any loss he may suffer through the non-performance of the promise, in spite of the fact of the agreement being void ab-initio. [Sec.56 para 3]

ex.; A contracts to marry B, being already married to C, and being forbidden by law to which he is subject to practice polygamy. A must make compensation to B for the loss caused to her by the non performance of his promise.

2. Subsequent OR supervening impossibility: - Section 56 para 2 declares, "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."

Thus where an event which could not reasonably have been in the contemplation of the parties when the contract was made, renders performance impossible or unlawful; the contract becomes void and stands discharged. This is known as frustration of contract brought about by supervening impossibility. It is also known as the "doctrine of supervening impossibility."

Cases where the "Doctrine of Supervening Impossibility" applies: - A contract will be discharged on the grounds of supervening impossibility in the following cases:-

1. Destruction of subject matter: - When the subject matter of a contract, subsequent to its formation, is destroyed, without the fault of the promisor or promisee, the contract is discharged. But it is so only when specific property or goods are destroyed which can not be regained.

Leading Case Law: - *Taylor vs. Caldwell (1863)*.

2. Failure of ultimate purpose: - Where the ultimate purpose for which the contract was entered in to fails, the contract is discharged, although there is no destruction of any property affected by the contract and the performance of the contract remains possible in literal sense.

Leading Case Law: - *Krell vs. Henry (1903)*.

3. Death or personal incapacity of the promisor: - Where the performance of the contract depends upon the personal skill or qualification or the existence of a given person, the contract is discharged on the illness, incapacity, or death of that person.

e.g.; 'A', contracts to act at a theater for six months in consideration of a sum paid in advance by 'B'. On several occasions A is too ill to act. The contract to act on those occasions becomes void.

4. Change of law: - A subsequent change in law may render the contract illegal and in such cases the contract is deemed discharged.

e.g.; there was a contract for sale of trees of a forest. Subsequently by an Act of Legislature, the forest was acquired by the State Government. The contract was discharged by impossibility created by subsequent change in law.

5. Outbreak of war: - All contracts entered in to with a alien enemy during war are illegal and void ab-initio. Contracts entered in to before the outbreak of war are suspended during the war and may be received after the war is over, provided they have not already become time barred.

Cases where the "Doctrine of Supervening Impossibility" does not apply: - The cases where the impossibility of performance is not excused are as follows: -

1. Difficulty of performance: - A contract is not discharged merely because its performance turns out to be difficult or burdensome. The parties will not be released from their obligations on account of rise or fall of price, depreciation or appreciation of currency, obstacle to the execution of the contract or becoming more expensive or less profitable.

2. Commercial impossibility: - When in a transaction profit dwindle to a very low level or actual loss becomes certain, it is said that the performance of the contract has become commercially impossible. Such a situation may arise on account of higher price of raw material or increase in the wage bill etc. Commercial impossibility also does not discharge a contract.

3. Default of third person: - The doctrine of supervening impossibility does not cover cases where the contract could not be preformed because of the impossibility created by the failure of third person on whose work the promisor relied.

Leading Case Law: - *Ganga Saran vs. Ram Charan Ram Gopal (1952)*.

4. Strikes, Lockouts, riots or civil disturbances: - A contract is not discharged automatically on the ground of supervening impossibility due to a strike by the workers or lock out by the employers or outbreak of riots or outbreak of some civil disturbance coming in the way of performance of the contract. However the parties to the contract may agree to contrary by making a clear provision in this regard.

5. Partial impossibility: - If a contract is made for the fulfillment of several objects, the failure of one or more of them does not discharge the contract.

6. Self induced frustration: - If frustration is imposed by the conduct of the party himself, or by the conduct of those for whom he is responsible, or by party's deliberate or negligent act or choice, the contract is not discharged.

Termination of Contract by Mutual Agreement: - Since a contract is created by means of an agreement, it may also be discharged by another agreement between the same parties. A contract may be discharged by mutual agreement in following four ways –

4. Novation: - "Novation occurs when a new contract is substituted for an existing contract, either between the same parties or between different parties, the consideration mutually being the discharge of the old contract".

In "novation" there may or may not be a change in parties. Generally the word "novation" is used when contracting parties are changed.

5. **Alteration:** - Alteration of a contract means change in one or more of the material terms of a contract. If a material alteration in a written contract is done by mutual consent, the original contract is discharged by alteration and a new contract in its altered form takes its place. A material alteration is one which alters the legal effect of the contract e.g., a change in the amount of money to be paid or a change in the rate of interest

It is relevant to state that a material alteration made in written contract without the consent of the other, will, make the whole contract void and no person can maintain an action upon it.

6. **Rescission:** - A contract may be discharged before the date of performance, by agreement between the parties to the effect that it shall no longer bind them. Such an agreement amounts to "rescission" or cancellation of contract, the consideration for mutual promises being the abandonment by the respective parties of their rights under the contract. An agreement of rescission releases the parties from their obligation arising out of the contract.

In case of rescission, the existing contract is cancelled by mutual consent without substituting a new contract in its place.

e.g.; A, promises to deliver certain goods to B on a certain date. Before the date of performance, A and B mutually agree that contract will not be performed. The contract stands discharged by rescission.

The rescission of avoidable contract may be communicated and revoked under the same rules which apply to the communication and revocation of proposal [Sec. 66].

4. **Remission:** - Remission may be defined, "as the acceptance of a lesser sum than what was contracted for, or, a lesser fulfillment of the promise made." Sec. 63 deals with the remission.

Section 62: - "If the parties to a contract agree to substitute a new contract or to rescind or to alter it, the original contract need not be performed."

Section 63: - "Every promisee may dispense with or remit wholly or in part the performance of the promise made to him or may extent the time of such performance or may accept any satisfaction which he thinks to fit."

Remission in whole is a waiver.

Waiver: - When a contracting party fails to perform his obligation under the contract, the other party (aggrieved party) may rescind the contract and may waive the promisor or release. This is a waiver.

Examples

1. **Novation:** - A owes B Rs. 10,000/-. A enters in to an agreement with B, and gives B a mortgage of his (A's) estate for Rs.5,000/- in place of debt of Rs.10,000/-. This is a new contract, which extinguishes the old.

2. **Remission [Sec. 63]:** - A owes B Rs. 5,000/-. A pays to B and B accepts, in satisfaction of the whole debt, Rs. 2,000/- paid at the time and place at which the Rs. 5,000/- were payable. The whole debt is discharged.

Restitution of Benefits: - Section 64 and 65 deals with restitution of benefits: -

Section 64: - "When a person, at whose option the contract is voidable, rescind the contract, the party rescinding a voidable contract shall, if he has received any benefit from the other party, restore the benefit to the person from whom he has received such benefit."

Section 65: - "When an agreement is discovered to be void or a contract becomes void, any person who has received any benefit under such agreement is bound to restore the benefit to the person from whom he has received it."

Difference between Assignment and Succession

S. No.	Assignment	Succession
1.	Assignment means transfer of rights and benefits under contract to a third person.	Succession means the process by which a person succeeds the rights, benefits and obligations of another person.
2.	Assignment is a voluntary act.	Succession takes place due to operation of law, e.g.; due to death and insolvency.
3.	Assignment generally involves transfer of rights and benefits only.	Succession involves succession of rights and obligations both.
4.	Assignment can be made to any person natural or artificial.	Succession refers to natural persons only.

Appropriation of Payments: - When a debtor, who owes several debts to the same creditor, makes a payment which is insufficient to satisfy the whole indebtedness. The question arises; "as to which of the debts the payment is to be applied?" Sec 59 to 61 of contract act answer this question and lay down following rules.

8. Debtor's express instructions must be followed: - Appropriation is the right given to the debtor for his benefit. Thus if the debtor expressly states that the payment made by him is to be applied to the discharge of some particular debt, the creditor must act accordingly otherwise he should not accept the payment.

9. Debtor's implied intention must be followed: - If there are no express instructions, then debtor's implied intention must be gathered from the circumstances attending the payment and appropriation must be done accordingly.

Illus.:- A owes B, among other debts Rs. 1,000/- upon a promissory note which falls due on the 1st June. He owes B no other debt of that amount on the 1st June A pays to B Rs. 1,000/-. The payment is to be applied to the discharge of the promissory note.

10. Appropriation by creditor: - If there is no express or implied direction by the debtor regarding the appropriation then the creditor has got the option to apply the payment to any debt lawfully due from the debtor, including a debt which is barred by the law Limitation Act.

11. Appropriation by law: -Where neither the debtor nor creditor has made any appropriation, then according to law, the payment is to be applied in discharge of the debts in order of time, whether or not they are time-barred. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

12. When principal and interest both due: - If a payment has been made without expressly stating whether it is towards interest or principal, payment is to be applied towards interest first, and then the balance to principal.

It may be emphasized that if the creditor accepts the payment, he must follow the above rules of appropriation otherwise he must refuse to accept the payment.

CHAPTER 6

VOID AGREEMENTS

The following agreements are expressly declared as void by Contract Act –

28. Agreements by parties which are incompetent to contract; u/s 11.
29. Agreements made under a bilateral mistake; u/s20.
30. Agreements the consideration or object of which is unlawful; u/s 23.
31. Agreements the consideration or object of which is unlawful; u/s 24.
32. Agreements without consideration; u/s 25.
33. Agreements in restraint of marriage; u/s 26.
34. Agreements in restraint of trade; u/s27.
35. Agreements in restraint of legal proceedings; u/s 28.

36. Agreements the meaning of which is uncertain; u/s29.

37. Agreements by way of wager; u/s30.

38. Agreements contingent on impossible events; u/s 36.

39. Agreements to do impossible acts; u/s 56.

40. In case of reciprocal promises to do things legal and also other things illegal, the second set of reciprocal promises is a void agreement u/s 57.

(I) Agreements in Restraint of Marriage: - According to Sec.26, "Every agreement in restraint of marriage of any person, other than a minor, is void." This is because the law regards marriage and marital status as the right of every individual.

e.g.; A agrees with B, for good consideration that she will not marry C. It is a void agreement.

But a promise to marry a particular person does not imply any restraint of marriage, and is, therefore, a valid contract. E.g.; A agrees with B that she will marry him only. It is a valid contract of marriage.

(II) Agreements in Restraint of Trade: - According to Sec 27, "Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void." Thus no person is at liberty to deprive himself of the fruit of his labour, skill or talent by any contract that he enters into.

Exceptions: - An agreement in restraint of trade is valid in the following cases:-

(1) Sale of Goodwill: - The seller of the goodwill of a business can be restrained from carrying on a similar business, within specified local limits, so long as the buyer or any other person deriving title of the goodwill from him carries on a like business therein, provided that the limits must be reasonable in the opinion of the Hon. Court depending upon the nature of the business.

(2) Partners' Agreement: - An agreement in restraint of trade among the partners or between any partner and the buyer of the firm's goodwill is valid if the restraint comes within any of the following cases:

(a) An agreement among the partners that a partner shall not carry on any business other than that of the firm while he is a partner [Sec 11(2) of the Partnership Act].

(b) An outstanding partner may agree with his partners not to carry on any business similar to that of the firm within a specified period or within specified local limits [sec 36(2) of the Partnership Act-1930]

(c) Partners may upon or on in anticipation of the dissolution of the firm, make an agreement that some or all of them will not carry on a business similar to that of the firm within a specified period or within specified local limits [Sec 54 of the Partnership Act]

16. (d) An agreement between any partner and the buyer of the firm's goodwill that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, provided the restrictions imposed are reasonable [Sec 55(3) of the Partnership Act]

(3) Trade Combinations : - An agreement in the nature of a business combination between traders or manufacturers e.g.; not to sell their goods below a certain price, to pool profit or output and to divide the same in the agreed proportion does not amount to a restraint of trade and is perfectly valid. But if an agreement attempts to create a monopoly, it would be void.

(4) Negative Stipulations in Service Agreements: - An agreement of service by which a person binds himself during the term of the agreement not to take service with any one else, is not in restraint of a lawful profession and be valid. But an agreement of service which seeks to restrict the freedom of occupation for some period after the termination of service is void.

(III) Agreements in Restraint of Legal Proceedings: - Sec. 28 declares the following two kinds of agreements void –

19. An agreement by which a party is restricted absolutely from taking usual legal proceedings, in respect of any rights arising from a contract.

20. An agreement which limits the time within which one may enforce his contract rights, without regard to the time allowed by the Limitation Act.

E.g.; If a clause in an agreement between A and B provides that either party can sue for breach within a year of breach only, the clause is void.

Exceptions : - **(a)** This section shall not make illegal a contract by which two or more persons agree that any dispute among them will be referred to arbitration and the amount awarded by the arbitrator shall be recoverable.

(b) This section does not affect an agreement whereby parties agree “not to file an appeal” in a High Court because Section 28 applies only to absolute restrictions on taking the legal proceeding, whereas here the restriction is only partial.

(IV) Uncertain Agreement: - According to Sec 29, “Agreements, the meaning of which is not certain or capable of being made certain, are void.” Thus if the terms used by parties are vague or indefinite, the law can not enforce the agreement.

Ex. (a) A agrees to sell B “a hundred tons of oil”. There is nothing what ever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A, who is a dealer in coconut oil only agrees to sell B “one hundred tons of oil”. The nature of A’s trade affords an indication of the meaning of the words and A has entered in to a contract for sale of one hundred tons of coconut oil.

(V) Wagering Agreement: - According to Sec. 30, “Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the results of any game or other uncertain event on which any wager is made.”

Exceptions: - Lotteries, crossword puzzles, quizzes, stock exchange operations, horse races etc.

What is wager: - A wagering agreement is one in which a person promises to give money to other person in exchange of an identical promise upon determination of an uncertain future event. The following are the essentials of a wager : -

(1) Two parties;

(2) Promise to pay money;

(3) The event is uncertain;

(4) The event is beyond the control of either party;

(5) The result of the agreement is winning of a party and loss of the other party;

(6) The parties do not have any interest in the event;

(7) The agreement is void u/s 30.

According to Sec. 30 of the Act, Wagering agreements are void. As a matter of fact, though such agreements are void and unenforceable, it is not forbidden by law. In other words, wagering agreements are void but not illegal. However, in the states of Maharashtra and Gujarat, wagering agreements have been held to be illegal. Though wagering agreements are void, collateral transactions to it would be valid.

CHAPTER 9

QUASI CONTRACTS

Under certain special circumstances obligation resembling those created by a contract are imposed by law although the parties have never entered into contract. Such obligations imposed by law are referred to as 'QUASI CONTRACTS' or 'CONSTRUCTIVE CONTRACTS' under the English law, and "certain relations resembling those created by contracts," under the Indian law. The term 'Quasi contract' has been used because such a contract resembles with a contract so far as result is concerned but it has no affinity with a contract in respect of mode of creation.

Quasi contract is not made by a process of proposal and acceptance or by free consent. It is a thrust upon us by law.

A Quasi-contract rests upon the equitable, "doctrine of unjust enrichment" which declares that a person shall not be allowed to enrich himself unjustly at the expense of another.

Salient feature of Quasi contract:-

(i) Such quasi contractual right is always a right to money, and generally, though not always, to a liquidated sum of money.

(ii) It does not arise from any agreement of the parties concerned it is imposed by law.

(iii) It is a right which is available not against a particular person or persons and so that in this respect it resembles a contractual right .

TYPES OF QUASI CONTRACTS

The following types of Quasi Contracts are enumerated in the Act from Sections 68-72:-

(1) Claim for necessities supplied to a person incapable of contracting or on his account: According to Sec. 68, "If a person incapable of being entering in to a contract, or any one whom he is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplied is entitled to be reimbursed from the property of such incapable person".

(2) Right to recover money paid for another person :- According to Sec. 69, "*A person who is interested in the payment of money which another is bound by law to pay, is entitled to be reimbursed by the other.*"

Illus.:- B holds land Bengal, on a lease granted by A, the Zamindar. The revenue payable by A to the government being in arrear, his land is advertised for sale by the government. Under the revenue law, the consequence of such sell will be

annulment of B's lease. B, to prevent the sale and consequent annulment of his own lease, pays to the government the sum due from A. A is bound to make good to B the amount so paid.

(3) Obligation of a person enjoying benefits of non-gratuitous act :- According to Sec. 70, "Where a person lawfully does any thing for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered."

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

Case law: - *Shyam Lal Vs. U.P. State (1968)*

(4) Responsibility of finder of goods :- According to Sec. 71, "A person who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a bailee."

Case law: - *Hollins vs. Fowler.*

(5) Liability for money paid or things delivered by mistake or under coercion :- According to Sec. 72, "A person to whom money has been paid or any thing delivered by mistake or under coercion, must repay or return it."

The term 'mistake' has been used in the section without any qualification or limitation whatever and comprises with in its scope a mistake of law as well as a mistake of fact :- [*Sales tax officer Vs. Kanhaiyalal Mukundlal (1959)*]

The term 'coercion' has been used in its ordinary sense and not as define in Sec. 15. Here 'coercion' means 'under pressure' [*Peplond Bulakhdas mills Vs. Union of India (1970)*].

Difference between Contract and Quasi Contract

S. NO.	CONTRACT	QUASI CONTRACT
1.	Contract is intentionally created by parties.	It is not intentionally created by parties but it is imposed by law.
2.	There are certain essential elements in a valid contract.	It does not have any essential elements
3.	Obligations are mutually created by parties.	Obligations are thrust upon the parties by law.
4.	It is founded upon the law of contract.	It is founded upon the "principles of natural justice, equity and fair play".

CHAPTER - 10

BREACH OF CONTRACT

Breach of a contract means promisor's failure to perform the promise. Breach of a contract may be of TWO types:-

17. Actual Breach; and (2.) Anticipatory Breach

21. Actual Breach: -- Actual Breach means promisor's failure to perform the promise on due date of performance. When a promisor fails or refuses to perform the promise upon the due date for performance then it is called actual breach of contract. The promisee is exempted and may rescind the contract. Promisee can sue the party at fault for damages for breach of contract.

22. Anticipatory Breach :- Sec.39 of the Act deals with anticipatory breach of contract and provides as follows "When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promise may put an end to the contract, unless he has signified, by words or by contract, his acquiescence in its continuance." An anticipatory breach of contract is a breach of contract occurring before the time fixed for the performance has arrived. It may take place in two ways:

(A) Expressly by words: - Here a party to the contract communicates to the other party, before the due date of performance, his intention not to perform it.

Case law: - *Hochester vs. De La Tour*.

(B) Impliedly by the conduct: - Here a party by his own voluntary act disables himself from the performing of contract

Ex.:- A person contracts to sell a particular horse to another on 1st of June and before the due date he sells the horse to some body else.

Effect of an Anticipatory Breach: - In case of anticipatory breach, the promisee is excused from performance and he may choose any one of the following two options:-

(i) He may either treat the contract as rescinded and sue the other party for damages for breach of contract immediately without waiting until the due date of performance, or

(ii) 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. But in that case, if he so decides the guilty party can take advantage of any supervening impossibility which may have the effect of discharging the contract.

Remedies for Breach of Contract

In the case of breach of contract the aggrieved party becomes entitled to any one or more of the following remedies against the guilty party.

41. Rescission of the contract: - Rescission of a contract means termination of the contract or putting an end to the contract. The aggrieved party may rescind the contract if he need not perform his part. Further the aggrieved party's entitled to claim damages from the promisor.

42. Suit for 'Quantum-Meruit': - The phrase 'quantum-meruit' literally means "as much as is earned" or "in proportion to the work is done". A right to sue upon quantum meruit arises when a contract, partly performed by one party, has been discharged by breach of contract by the other party, is discovered void, or becomes void. The remedy may be availed of either without claiming damages or in addition to claiming damages for breach.

The payment under quantum-meruit will be allowed in the following circumstances:-

(A) Where work has been done in pursuance of a contract, which has been discharged by the default of the defendant.

In the case of a wrongful breach of contract the aggrieved party can always claim payment quantum-meruit whether the contract is divisible or indivisible.

Ex.: A, engages B, to build a house. After a part is constructed A prevents B from working any more. B, is entitled to get reasonable compensation for work done under the doctrine of quantum-meruit in addition to the damages for breach of contract.

(B) Where work has been done in pursuance of a contract which is “discovered void” or “becomes void”, provided the contract is divisible [Sec. 65] .

(C) When part performance of the contract is accepted, provided the contract is divisible and part performance has value.

(D) When a person enjoys benefit of non-gratuitous act although there exists no express agreement between the parties.

According to Sec.70, “Where a person lawfully does any thing for the another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit there of; the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.”

Ex.: A, a trader, leaves certain goods at B’s by mistake. B treats the goods as his own. He is bound to pay A for them.

3. Suit for Specific Performance:- The aggrieved party may file a suit for specific performance of the contract. This remedy is available under ‘Specific Relief Act’ 1963.

Under certain circumstances an aggrieved party may file a suit for specific **performance**, i.e., for a decree by the court directing the defendant to actually perform the promise that he has made. Such a suit may be filed either instead of or in addition to a suit for damages.

But it is only where it is just and equitable ‘so to do, i.e., where the legal remedy is inadequate or defective, that the courts issue a decree for specific performance. It is usually granted in contracts connected with land, buildings rare articles and unique goods having some special value to the party suing because of family association. Specific performances not granted, as a rule, in the following cases:-

18. Where monetary compensation is an adequate relief for non-performance of the contract.

19. Where the Hon. Court can not supervise the actual execution of the contract, i.e., where the performance is very lengthy and involves minute to minute details.

20. When performance of the contract is dependant upon personal skills of the promisor or personal wish of the promisor.

21. Where one of the parties to the agreement does not posses competency to contract and hence can not be send for breach of contract.

4. Suit for ‘Injunction’:- “injunction” is an order of Hon. Court restraining a person from doing a particular act. Where a party is in breach of negative term of the contract, i.e., where he is doing some thing which he promised not to do. Thus injunction is a preventive relief. It is particularly appropriate in cases of ‘anticipatory breach of contract’ where damages would not be an adequate relief.

STAY: Stay order means an order of Hon. Court that there should be no material change in the circumstances until further order of the Hon. Court, i.e., the situation should be frozen as it is on date and time of the stay order.

5. Suit for Damages:- Damages are the monetary compensation allowed to the aggrieved party for the loss or injury suffered by him as a result of the breach of contract. The fundamental principle underlying damages is not punishment but compensation. As a general rule, “Compensation must be commensurate with the injury or loss sustained, arising naturally from the breach”, “If actual loss is not proved no damages will be awarded”. Damages may be of following types:-

1. Natural or Ordinary or General or Compensatory damages:- The aggrieved party can claim such damages which arise naturally in the usual course of things from the breach of contract. Ordinary damages are generally the difference between contract price and market price in sale of goods contracts. [Sec.73 Para 1]

Case law: Hadley Vs. Baxen Dale(1854) :- This case is said to be the foundation of modern law of damages (as Sec.73 is almost based on the rules laid down in this case.) In this case :

H's mill was stopped by a breakage of the Crankshaft. H delivered the shaft to B, a common carrier, to take it to the manufacturers as a pattern. The only information given to B was that the article to be carried was the broken shaft of the mill. It was not made known to B that delay would result in loss of profits. By some neglect on the part of B, the delivery of the shaft was delayed beyond a reasonable time. In consequence the mill remained idle for a longer period than should have been necessary H brought an action against B claiming damages for loss of profits which would have been made during the period of delay. H was held that it was not a direct consequence of the breach and therefore not recoverable. Hence only nominal damages were awarded.

2. Special Damages:- Special damages may be allowed if the parties had knowledge of the special circumstances. If the parties knew that special loss is likely to be arise from the contract, special damages may be awarded. The most crucial thing is communication and knowledge of special circumstances and special loss which is likely to result. [Sec. 73, Para 1]

Illus. :- A, having contracted with B to supply B 1000 tons of iron @Rs.100 a ton, to be delivered at a stated time, contracts with C for to purchase of 1000 tons of iron at Rs. 80 a ton, Telling C that he does so for the purpose of performing his contract with B. C fails to perform his contract with A. C must pay to A Rs.20,000 being the profit which A would made by the performance of his contract with B. (If C was not told of B's contract then only the difference in contract price and market price, if any could be claimed)

3. Exemplary or Vindictive Damages:- Exemplary damages are punitive damages which are awarded by the Court in some cases. It is generally a high amount disproportionate to the loss. Exemplary damages may be awarded in following cases.

(a) **Breach of a contract to Marry**:- In this case the amount of damages will depend upon the extent of injury to the party's feelings. One may be ruined, other may not mind so much.

(b) **Dishonor of a cheque by a Banker when there are sufficient funds to the credit of the consumer**:- In this case the rule of ascertaining the damages is, "the smaller the cheque, the greater the damage." Of course, the actual amount of damages will differ according to the status of the party.

(4) **Token or Nominal Damages** :- These are awarded by the Hon. Court when aggrieved party really does not suffer any loss from the breach of contract and the get Hon. Court wants to punish the guilty. A normal amount from rupee one to fifty can be awarded by the court in such cases.

(5) **Damages for inconvenience discomfort and suffering**:- Hon. Court will look into it and may allow monetary damages for such inconveniences.

Duty to Mitigate Damage Suffered:- It is the duty of injured party to mitigate damage suffered as a result of the breach of contract by the other party. He must use all reasonable means of mitigating the damage, just as a prudent man would, under similar circumstances in his own case. He can not recover any part of the damage, traceable to his own neglect to mitigate.

"The rule in regard to mitigation must be applied with discretion and a man who has already put himself in the wrong by breaking his contract has no right to impose new and extraordinary duties on the aggrieved party." "Courts should take care to see that they have put the plaintiff in same position as if the contract had been performed, and have not been

overgenerous to the contract breaker by too severe an application of the rule, that the plaintiff must take reasonable steps to mitigate damages.”

Liquidated Damages: - Liquidated damages, means a sum fixed up in advance, which is a fair and genuine pre-estimate of the probable loss that is likely to result from the breach. Courts in England usually allow “liquidated damages” as stipulated in the contract, without any regard to the actual loss sustained.

Under the Indian law Sec.74 provides, “when a contract has been broken and a sum is named in the contract as the amount to be paid in breach, the aggrieved party is entitled to receive from the party, who has broken the contract, reasonable compensation which should not exceed the amount mentioned in the contract.” Thus according to the section, the named sum determines only the maximum limit of liability in case of the breach of contract. The Section does not confer a special benefit upon any party; it merely declares that the Hon. Court will award to the party aggrieved only reasonable compensation not exceeding the stipulated amount.

The Explanation added to Sec. 74 states, “A stipulation for increased interest from the date of default may be stipulated by way of penalty.” It implies that such a stipulation may be considered a penalty clause and disallowed by the Hon. Court, if the enhanced rate is exorbitant.

Exception: - when any person enters into any bail bond, recognizance or other instrument of the same nature, or under the provisions of any law or under the orders of the Government, gives any bond for the performance of any public duty or act in which the public are interested, he shall be liable to pay the whole sum mentioned there in upon breach of the condition of any such instrument.

Difference between “Liquidated Damages” and “Penalty”

S. No.	LIQUIDATED DAMAGES	PENALTY
1.	“ Liquidated Damages ”, means a sum fixed up in advance, which is fair and genuine pre-estimate of the probable loss that is likely to result from the breach.	“ Penalty ”, means a sum fixed up in advance, which is extravagant and unconscionable in amount in comparison with the greatest loss that could conceivably be proved to have followed from the breach.
2.	The essence of the ‘liquidated damages’ is a payment of money to <u>avoid unnecessary litigation</u> in the event of breach of contract.	The essence of the Penalty is a payment of money stipulated as in <u>terrorem</u> of the offending party.
3.	Hon. Court may award liquidated damages if they are reasonable and are actual damages arising from the breach.	Penalty is never awarded by the Hon. Court.
4.	Indian courts allow reasonable and actual damages as a rule u/s 74 as a rule. But English	Indian and English Courts treat ‘Penalty’ clauses as invalid.

	courts generally allow liquidated damages.	
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Difference between “Ordinary and Liquidated Damages”

S. No.	ORDINARY DAMAGES	LIQUIDATED DAMAGES
1.	Ordinary damages are those damages which arise naturally in the usual course of things from the breach of contract.	“Liquidated damages” means a sum fixed in advance, which is a fair and genuine pre-estimate of the probable loss that is likely to result from the breach.
2.	Ordinary damages are estimated after the breach.	Liquidated damages are estimated in advance at the time of making contract.
3.	Hon. Court will allow ordinary damages as a rule u/s 73.	Hon. Court may allow liquidated damages, if they are reasonable and actual damages.

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