CHAPTER 1

NATURE OF CONTRACT

1.1 INTRODUCTION TO LAW

With the growth of civilization people's social and economic behavior has assumed a multi dimensional character. It is therefore neither desirable nor feasible to control all kinds of people's activities through a uniform set of rules and principles. Most civilized societies therefore provide and enforce different set of rules and guiding principles for different kinds of social behavior. Hence there are different branches of law.

The term law is used in various senses. In its widest sense, law means any rule of action. In natural sciences it refers to laws of nature. In social sciences it used to indicate the rule of external human action. But law in its legal sense means those rules, standards and principles governing and regulating social conduct, which are recognized and enforced in the public tribunals- the courts of law. It regulates the actions of persons in respect to one another and in respect to the entire social group.

Law is either public law or private law. Public law concerns the public as a whole and is divided in to three classes constitution law, administrative law and criminal law. Private law pertains to individuals, it is separated such fields as contracts, agencies, sales, surety ships, negotiable instruments etc.

1.2 BRANCHES OF LAW

The various branches of law include, among others, the following

1. International law.
2. Constitutional law.
2. Criminal law.
4. Civil law.

Each branch of law regulates and controls a particular sphere of activity.

1.3 MEANING AND DEFINITION OF LAW

"Law is the body of principles recognized and applied by the state in the administration of justice". **- Salmond**

conduct in life.

" Law is that portion of the established ... gained distinct and formal recognition in the shape of ... authority and power of the government".

– Wooddrow Wilson

In short law denotes rules and principles enforced by the state to control and regulate the behavior of the people so as to secure justice, peaceful living and social security.

Every system of law must carry sanctions or punishments for violation of rules. Legally a set of rules alone is not sufficient unless

- It is enforced by the state.
- It has its source in sovereign authority.
- It is accompanied by sanctions.
- It has a command over and compels a course of conduct.
- It attempts to achieve security and uniformity in its application.

1.4 NEED AND IMPORTANCE OF LAW

Following are the needs and importance of law.

- The existence of law is necessary for maintaining of peace and order in society.
- In the absence of law no person will recognize the rights of others.
- Law is necessary to make organized living possible and to bring social changes according to the needs of the society.
- As a social being, every person comes in to contact with others in different capacities and he is expected to observe certain set of rules which govern each other. It therefore follows that some knowledge of law is necessary to a greater or lesser extent for every person.
- There is a well known maxim knows as "ignorance of law is no excuse". However this does not mean that every member of society must learn every branch of law. The requirement is that he must know something about rules and regulations by which he is governed and the general principles of the law of the land.

1.5 OBJECTS OF LAW

In the earlier times the object of law was limited to maintain law and order in the country. Now a days the main object of law is considered to be established socio economic justice and remove the imbalances in the socio economic structure.

Thus the function of law is to preserve, guide and advance the social values of the society with a view to sustain liberty, achieve justice and advance the good of the society. Therefore the main object of law is to bring about all round welfare and improvement of the society.

1.6 FEATURES OF LAW

> *"Law is the body of principles recognized and applied by the state in the administration of justice"*
>
> *– Sir John Salmond*

The features of law are as follows

- Body of principles is framed by the government.
- Law is recognized by the state i.e by both the houses of parliament.
- Object of law is to maintain social justice.
- Creation and protection of rights implements duties upon parties.

The state should create number of legal rights for its citizens. They may be fundamental rights or general rights. Rights are classified in to two types, namely rights in property, and rights against other persons.

1.7 MERCANTILE LAW OR BUSINESS LAW

Mercantile law is not a separate branch of law. Basically it is a part of civil law which deals with the rights and obligations of mercantile persons arising out of mercantile transactions in respect of mercantile property.

1.7.1 MEANING

The term mercantile law is derived from two terms namely 'Mercantile' which means relating to business or merchants and 'Law' which means the rules and regulations established by the government of a country to enforce peace and order in the state. Therefore it is that branch of law which governs and regulates the trade and commerce. This deals with the rights and obligations arising out of mercantile transactions between the mercantile persons. A mercantile person is one who enters in to business transactions and may be individuals, an association of persons such as partnerships ort a company.

1.7.2 DEFINION

- "Mercantile law means that branch of law which is applicable to or concerned with trade and commerce in connection with various mercantile or business transactions" – S.R.Daver
- "The phrase mercantile law or commercial law is generally used to denote that portion of the law which deals with the rights and obligations arising out of transactions, between mercantile persons".

1.8 SCOPE OF MERCANTILE LAW

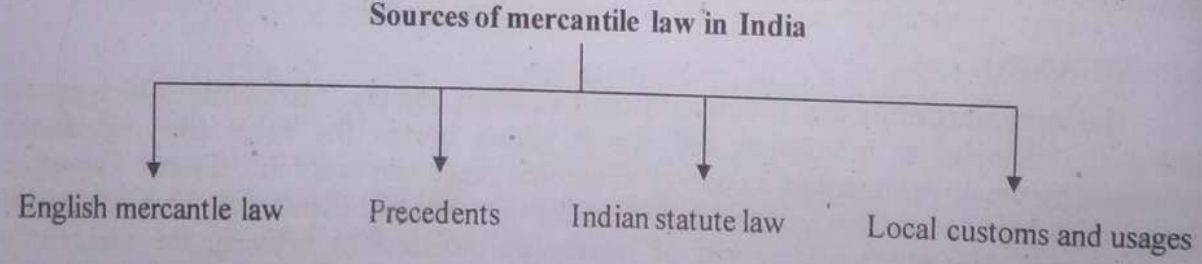
The scope of mercantile law has enormously widened because of increasing complexities of the modern business world. It includes the laws relating to contracts, sale of goods, partnerships, companies, negotiable instruments, insurance, insolvency, carriage of goods etc.

The term mercantile law is used to denote that branch of law which deals with the rights and obligations arising out of mercantile transactions between mercantile persons. It should be noted that business law is altogether distinct and separate from other branches of law. In its application recourse is often taken to other pieces of legislation laws as such are all inter related. It is only a matter of convenience that legislation is classified in to business law, labour law etc.

The need for the knowledge of law can not be over- emphasized It is common knowledge that ignorance of law is no excuse, which implies that it is not open to a person committing the breach of law to plead ignorance of law. The breach of law is omission to do something for which the law casts an obligation upon the to do or doing something which the law refrains. That is why it is generally known and accepted that every person is presumed to know the law.

1.9 SOURCES OF COMMERCIAL LAW

In India mercantile law is basically an adoption of the English law with some modifications and reservations which are necessitated by the peculiar conditions prevailing in India. In order, therefore to trace the origin of the legal principles governing commercial transactions in India, it becomes necessary to know the sources of English mercantile law.



I. English mercantile law

The English mercantile law is the main source of Indian mercantile law. Many laws passed by the British Government in England as well as India were adopted by our independent Govt even without altering their names and years of passing. The sources of English mercantile law are

a. The English common law

The term common law is used to denote the case law based upon English customs, usages and traditions which were developed over centuries by the English

1.13 MEANING AND DEFINITION OF CONTRACT

A contract is an agreement made between two or more parties which the law will enforce. In other words legally enforceable promises are termed as contracts. Thus a contract is an agreement enforceable at law, made between two or more persons, by which rights are acquired by one or more, to act on the part of the other. It creates and defines obligations between the parties.

DEFINITIONS

- In the words of **Salmond,**" a contract is "an agreement creating and defining obligation between the parties".
- "An agreement between two or more persons which is intended to be enforceable at law and is constituted by the acceptance by one p[arty of an offer made to him by the other party to do or abstain from doing some act". – **Halsbury.**
- "Every agreement and promise enforceable at law is a contract"- **Pallock.**
- According to Sec 2(h) of the Indian contract act, 1872," An agreement enforceable by law is a contract". In other words an agreement which can be enforced in a court of law is known as a contract.

On analyzing this definition of contract, it appears that a contract must have the following two elements.

- An agreement and
- Enforceability of an agreement

In the form of an equation, it can be shown as under

Contract = an agreement + enforceability of an agreement.

1.14 ELEMENTS OF CONTRACT

Agreement:

According to Sec 2(e) of the contract act, 1872," Every promise and every set of promises forming the consideration for each other is known is an agreement.

> ***Example***
>
> *X offer to sell his car for Rs.1,00,000 to Y. Y accepts this offer. This offer after acceptance becomes promise and the promise is treated as an agreement between X and Y.*

Promise:

According to sec 2(b) of the Indian contract act 1872," A proposal when accepted, becomes a promise".

In other words an agreement consists of an offer by one party and its acceptance by the other. In the form of an equation, it can be shown as under

The term promise has been defined in sec 2(b) of the act as," when the person to whom the proposal is made signifies his asset thereto, the proposal is said to be accepted. A proposal when accepted becomes a promise.

Agreement = Offer (or proposal) + Acceptance of offer (or proposal)

Sec 10 of the act states," An agreement is a contract if it is made by the free consent of the parties, competent to contract for a lawful consideration and with a lawful object and are not hereby expressly declared as void. There are two kinds of agreements namely social agreements and legal agreements. Social agreements do not enjoy the benefits of law. Therefore social agreements not enforceable and as such can not be called 'contract'.

An agreement in which there is an intention to create legal obligation is called legal agreement. A contract is concerned only with legally enforceable agreements. In order therefore to form an agreement, there must be a proposal or offer by one party and its acceptance by the other.

On analyzing the definitions of agreement, the following characteristics of an agreement become evident.

- **Plurality of persons:**

  There must be two or more persons to make an agreement because one person can not enter in to an agreement with himself.

- **Consensus ad idem**:

  Both the parties to an agreement must agree about the subject matter of the agreement in the same sense and at he same time.

Enforceability by the law:

The other element of the contract is enforceability by law. It emphasizes the importance of intention to create a legal obligation or duty to perform or abstain from performing certain acts.

An agreement to become a contract must give rise to a legal obligation i.e a duly enforceable by law. If an agreement is incapable of creating a duly enforceable by law it is not a contract. Thus an agreement is a wider term than a contract.

Obligation:

An agreement to become a contract must give rise to a legal obligation or duty. The term 'obligation' is defined as a legal tie which imposes upon a definite person or persons the necessity of doing or abstaining from doing a definite act or acts. It may relate to social or legal matters. An agreement which gives rise to a social obligation is not a contract. It must give rise to a legal obligation in order to become a contract.

the usual presumption is that ... parties intend to create legal obligations. The law of contract covers such agreements where the parties intend to crate legal obligations. The law of contract does not cover such agreements where the parties do not intend to create any legal obligation.

Thus the law of contract is not the whole law of agreements.

The law of contracts is not whole law of obligations:

The law of contracts is the law of only those obligations which arise out of agreements. The law of contracts is not concerned with those obligations which do not arise out of agreements. For example obligation to maintain wife and children, obligation arising from judgment of courts, obligations arising from torts or civil wrong. Thus the law of contracts is not the whole law of obligation.

1.18 DIFFERENCE BETWEEN AN AGREEMENT AND A CONTRACT

S.No	Agreement	Contract
1	Offer and its acceptance constitute an agreement	Agreement and its enforceability constitute a contract
2	An agreement may or may not create a legal obligation	A contract necessarily create a legal obligation
3	Every agreement need not necessarily be a contract	All contracts are necessarily agreements
4	Agreement is not concluded or a binding contract	Contract is concluded and binding on the concerned parties.
5	The enforceability depends on the nature of contract	It is enforceable under the provisions of the law of the country.
6	Agreements may be lawful or unlawful	Only lawful agreements become contracts enforceable in a court of law.

1.19 NATURE OF CONTRACT

The law of contract differs from other branches of law in an important aspect. It does not lay down a number of rights and duties which the law will enforce; it consists rather of a number of limiting principles, subject to which the parties may create rights and duties for themselves which the law will uphold. The parties to a contract, in a sense make the law for themselves. So long as they do not infringe some legal prohibition, they can make what rules

they like in respect of the subject matter of their agreement and the law will give effect to their decisions.

1.20 CLASSIFICATION OF CONTRACTS

Contracts may be classified according to their validity, formation, performance, execution. Besides these two more contracts are mentioned in the act. They are wagering contracts and contingent contract.

I. CLASSIFICATION ACCORDING TO VALIDITY

A contract is based on an agreement. According to the validity of contracts they are classified in to in to five such as valid, void, voidable, unenforceable and illegal contract. A brief discussion is as follows.

Valid contract:

A valid contract is an agreement which is binding and enforceable. In other words a contract which satisfies all the conditions prescribed by law is a valid contract.

> ***Example***
>
> *X offers to marry Y. Y accepts X's offer. This is a valid contract*

Void contract:

A void contract is really not a contract at all. It is an agreement which is without any legal effect. According to sec 2(j) of the Indian contract act 1872,"A contract which ceases to be enforceable by law becomes void when it ceases to be enforceable.

In other words void contract is a contract which was valid when entered in to but which subsequently became void due to impossibility of performance, change of law or some other reason.

> ***Example:***
>
> *X offers to marry Y. Y accepts X's offer. Later on Y dies. This contract was valid at the time of its formation but became void on the death of Y.*

Voidable contract

It is an agreement that is binding and enforceable but, because of the lack of one or ore of the essentials of a valid contract, it may be repudiated by the aggrieved party at his option. If the party having the right to avoid his obligation does not exercise the right within a reasonable time, the agreement is binding and enforceable.

According to Sec 2(i) of the Indian contract act 1872, an agreement which is enforceable by law at the option of one or more of the parties thereon but not at the option of the other or others is a voidable contract.

In case of voidable contract, if the aggrieved party decides to repudiate the contract the party rescinding the contract must restore the benefit received by him under the contract to the person from whom the benefit was received and the other party is freed from his obligation to perform the contract.

> ***Example:***
>
> *A agreed to sell his car to B for Rs 50,000. The consent was obtained by use of force. The contract is* voidable *at the option of A. A can put an end to this contract, if he so decides.*

Void agreement

A void agreement is an agreement which is not enforceable by law. A void agreement ahs no legal effect. It confers no rights on any person and creates no obligations. Such an agreement is without any legal effect abinitio (From the very beginning). There is absence of one or more essential elements of a contract except that of free consent in the case of a void agreement. An agreement with a minor, an agreement in restrain of trade etc are examples of void agreements.

Unenforceable contract

An unenforceable contract is one which is valid in itself, but is not capable of being enforced in a court of law because of some technical defect such as absence of writing, registration, requisite stamp etc or time barred by the law of limitation. For example an oral arbitration agreement is unenforceable because the law requires arbitration agreement to be in writing. But such unenforceable contracts are not void and therefore if they have been performed and property has been transferred the court will not intervene to set the agreement aside.

Illegal contract:

The word illegal means 'contrary to law' and the term 'contract' means an agreement enforceable by law. As such to speak of an 'illegal contract' involves a contradiction in terms because it means something like this – an agreement enforceable by law and contrary to law. Most appropriate expression therefore would be illegal agreement and is void ab initio.

An illegal agreement then is an agreement, the consideration or object of which

1. Is forbidden by law.
2. Defects the provisions of any law.
3. Is fraudulent.

CHAPTER 2

OFFER AND ACCEPTANCE

2.1. MEANING AND DEFINITION OF OFFER

An offer is a proposal made by one party to another to enter in to a legally binding agreement with him. According to sec 2(a) of the Indian Contract Act 1872, "A person is said to have made the proposal when he signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that offer to such act or abstinence. An offer involves the following essential elements.

- It must be made by one person to another person. There can be no 'proposal' by a person to himself.
- It must be an expression of readiness or willingness to do or to abstain from doing something.
- It must be made with a view to obtain the consent of that other person to proposed act or abstinence.

Thus a casual enquiry – " Do you intend to sell your motorcycle? – is not a 'proposal'. Similarly a mere statement of intention – " I may sell my motorcycle if I can get Rs.14,000 for it" – is not a 'Proposal'. But if M says to N, " Will you buy my motorcycle for Rs.14,000", or " I am willing to sell mu motorcycle to you for Rs.14,000", we have a 'Proposal' as it has been made with the object of obtaining the assent of N.

2.2. OFFERER AND OFFEREE

Offerer : The person making the proposal is called the offerer or proposer or promisor.

Offeree : The person to whom the proposal is made is called the offeree or proposee.

> *Example*
>
> *X says to Y, "I want to sell my car to you for Rs.1 lakh." Here 'to sell car' is an offer or proposal. X who has made the offer is called offerer or promisor. Y to whom the offer has been made is called the offeree or proposee.*

When the offeree accepts the offer, he is called the "acceptor" or "promisee".

2.3. TYPES OF OFFER

An offer can be made by any act which has the effect of communicating it to another person. An offer may either be an 'express offer' or 'implied offer'.

(a) Express offer: If an offer is made by words spoken or written, it is called express offer.

For example, A offers to sell his car to B for Rs.1,00,000. It is an express offer.

(b) Implied offer: An implied offer is one which may be inferred from the conduct of the party or the circumstances of the case.

For example where a person hires an auto rickshaw for going from one place to another, he thereby undertakes to pay the fare even though he makes no express promise to do so. So it is an implied offer.

To whom an offer is made.

An offer may be 'specific' or 'general'

Specific offer:

A specific offer is one which is made to a definite person or particular group of person. A specific offer can be accepted only by that definite person or that particular group of person to whom it has been made.

A promises to pay Rs.500 to B, if he brings back his missing dog.

General offer

A general offer is one which is not made to any specific person, but to the public at large. It can be accepted by any person who having the knowledge of the offer, comes forward and acts accordingly.

Example:

Announcement of reward through newspapers for restoration of lost goods to the owner.

The leading case on the subject of general offer is Cartill Vs Carbolic smoke ball Co.

In this above case, the Carbolic smoke ball Company issued an advertisement in which the company offered to pay £100 to any person who contracts Influenza, after having used [illegible] weeks, according to the [illegible]

- An offer may be made to the general public in which case it can be accepted by any particular individual.
- It was not a mere advertising puff and the deposit in the bank showed the sincerity in the promise.
- It was argued that a notification of the acceptance should have been made to the company. But on this point it was held that in such cases the performance of the conditions is the acceptance of the offer.
- An advertisement need not always be a mere invitation to offer but may in certain circumstances amount to an offer.

Cross offer

Two offers which are similar in all respects made by two parties to each other, in ignorance of each other's offer are known as 'cross offers'. Cross offers do not amount to acceptance of one's offer by the other. Hence no contract is entered into on cross offers.

> ***Example :***
>
> *A, by a letter offered to sell his motorcycle to B for Rs.10,000. Without knowing about A's offer B also by a letter offered to buy A's same motor cycle for Rs.10,000. Both the offers* crossed *each other in post. In this case the offers are cross offers and thus no binding contract will come into existence.*

Standing offer

An offer of a continuous nature is known as 'Standing Offer'. A standing offer is in the nature of a tender. It is the same thing as an invitation to an offer. A contract is said to have been entered in to only when an order is placed on the basis of the tender.

> ***Example :***
>
> *X ltd requires a large quantity of certain goods during the 12 months period and gives an advertisement inviting tender in the leading newspaper. Z submitted the tender to supply those goods at a specific rate. Z's tender is accepted or approved. Now Z's tender becomes a standing offer. Each order given by X ltd will be an acceptance of the offer.*

The Types of offer may be positive or negative.

An offer may be to do something or not to do something. An offer to do something is positive offer and an offer not to do something is negative offer.

Counter offer

The Counter offer is a new offer which is made with a view to reject the original offer. As and when a counter offer has been made, the first offer lapses and it can't be treated as still open.

9. The offer may be made to the world at large.

It means that it is not necessary that an offer should be made to a specific person. An offer may be specific as well as general one. It may be noted that in case of a general offer, the contract is not made with the entire world. But it is made only with the person, who having the knowledge of the offer, comes forward and acts according to the conditions of the offer.

10. Two identical cross offers do not make a contract.

When two parties make identical offers to each other, in ignorance of each others offer, the offers are 'Cross offers'. 'Cross offers' do not constitute acceptance of one's offer by the other and as such there is not completed agreement.

2.5 ACCEPTANCE

A contract emerges from the acceptance of an offer. Acceptance is the act of assenting by the offerer of his willingness to be bound by the terms of the offer.

The term acceptance is defined in sec 2(b) of the Indian contract act, which leads as under.

"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".

The analysis of this legal definition shows that an acceptance is the consent given to the offer (proposal) and a binding contract between the offerer and the offeree comes into existence on the acceptance of the proposal.

Example :

A offers to sell his car to B for Rs.90,000. B accepts this and agrees to buy A's car for Rs.90,000. In this case a binding contract comes into existence between A and B.

2.6. WHO CAN ACCEPT AN OFFER?

Acceptance of particular offer.

When an offer is made to a particular person, it can be accepted by him alone. If it is accepted by any other person, there is no valid acceptance. The rule of law is clear that if you propose to make a contract with A, B cannot substitute himself for A without your consent.

Example :

X sold his business to Y but this fact was not known to an old customer Z. Z placed an order for certain goods to X by name. Y supplied those goods to Z. It was held that there was no contract between Y and Z because Z never made any offer to Y. (Boulton Vs Jones)

CHAPTER 3

CONSIDERATION

3.1. MEANING AND DEFINITION OF CONSIDERATION

Consideration is what a promisor demands as the price for his promise. Consideration is "which for what" something that a person gives for something he receives. In simple words, the consideration is the price of the promise. This term is used in the sense of quid-pro-quo, i.e. something in return. This something may be some benefit, right, interest or profit or it may also be some forbearance, detriment, loss or responsibility upon the other party.

The term "Consideration" in sec 2(d) of the Indian Contract Act, which reads as under. "When at the desire of the promisor, the promisee or any other person has done or abstained from doing or promises to do or to abstain from doing something such act or abstinence or promise is called a consideration for the promise.

The meaning of consideration becomes clear from the following examples.

> ***Example :***
>
> *A agrees to sell a* house *to B for Rs.1,00,000. For A's promise the consideration is Rs.1,00,000. For B's promise the consideration is the house.*

3.2. ESSENTIAL PARTS OF THE CONSIDERATION

Essential parts of consideration are as follows

(a) The consideration is an act or abstinence.

(b) Such act or abstinence should be done at the desire of the promisor.

(c) Such act or abstinence may be done by the promise or any other person.

(d) Such act or abstinence is either already executed or is in the process of execution or may still executory.

3. 3. LEGAL RULES FOR A VALID CONSIDERATION.

Essentials of consideration or the legal rules in respect of consideration to an agreement are as under.

CHAPTER 4

CONTRACTUAL CAPACITY

4.1 MEANING

An essential ingredient of a valid contract is that the contracting parties must be 'Competent to contract (Sec 10). Thus an agreement grows in to a contract only when it is enforceable by law. One of the essential conditions for the enforceability of an agreement, is that the concerned parties must be competent to enter into an agreement.

The capacity to contract means the competence (i.e. capability) of the parties to enter into a valid contract.

4.2 DEFINITION

Section 11 lays down that "Every person is competent to contract who is of the age of majority according to the 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 declares that a person is incompetent to contract under the following circumstances.

I. If he minor, according to the law to which he is subject.

II. If he is of unsound mind, and

III. If he is disqualified from contracting by any law to which he is subject.

4.3 LEGAL ELIGIBILITY (OR) COMPETENT TO CONTRACT.

As per the stat of sec 11 of the Indian Contract Act, the following persons are not competent to contract i.e. they are incapable of entering into a valid contract.

1. Minors
2. Persons of unsound mind (Lunatic, Idiots, Drunken person)
3. Persons disqualified by law.(Insolvents, Alien Enemy, Foreign Sovereigns, Convicts)

I. MINOR

A minor is a person who has not attained the age of majority. For the purposes of entering in to contract, the age of majority is 18 years. Thus a minor is a person who is below the age of 18 years. The term 'minor' is explained in sec 3 of the Indian Majority act 1875 which reeds as under.

"A minor is a person who has not completed 18 years of age"

Note: In the following two cases a person becomes major on completing the age of years.

(a) Where a guardian of a minor's person or property has been appointed under Guardians and Wards Act, 1890 and

(b) Where the superintendents of minor's property is assumed by a court of wards.

The age of major it is to be determined according to the law to which the minor subject.

MINOR'S AGREEMENTS

The law regarding as the minor's agreement may be summed up as under.

1. An agreement with a Minor is Void-Ab-initio.

Law acts as the guardian of minors and protect their rights because they do possess the capacity to judge what is good and what is bad for them. Thus agreement with a minor is void-ab-initio. i.e. absolutely void and not merely voidable. An agreement with a minor does not create any legal rights and obligations between the concerned parties.

> ***Example***
>
> *In the leading case of Mohori Bibi Vs Dharmo Dos Ghosh, a minor executed a mortgage for Rs.20,000 and received Rs.8,000 from the mortgagee. The mortgagee filed a suit for the recovery of his mortgage money and for sale of the property in case of default. The Privy Council held that an agreement by a minor was absolutely void as against him and therefore the mortgagee could not recover the mortgage money nor could be have the minor's property sold under his mortgage.*

2. The Rule of Estoppel does not apply to a minor.

Section 115 of the Indian Evidence Act explains "Estoppel" as follws: "When one person has, by his declaration

Minor is not estopped from pleading his infancy in order to avoid a contract, even if he has entered in to an agreement by falsely representing that he was of full age. In other words where an infant represents fraudulently or otherwise that he is of age and thereby induces another to enter into a contract with him, then in an action found on contract the infant is not estopped from setting up infancy.

3. No restitution except in certain cases.

A minor cannot be ordered to make compensation for a benefit obtained under void agreement because restitution apply only to contracts between competent parties.

are not applicable to a case where there is not and could not have been any contract at all. Thus when the minor receives the benefits of money, he may be compelled to restore the same based on the principle that he who seeks equity must do equity.

4. Minor's Liability for necessaries.

If a person supplies necessaries to a person who is incapable of entering into a contract or to any one whom such incapable person is legally bound to support then he can claim reimbursement from the property of such incapable person. For such contracts he cannot be held liable personally. His property or estate alone will be liable.

Example

(a). A supplies B a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

(b). A supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life. A is entitled to be reimbursed from B's property.

5. Minor's liability in tort.

A 'tort' is a civil wrong for which the ordinary remedy is damages. The infant is liable for his tort, i.e. a wrong unless the tort is in reality a breach of contract. The tort must be separate from and independent of contract. Otherwise many contracts would not be enforced on minors in an indirect manner.

6. No specific performance.

Since an agreement by a minor is absolutely void, the court will never direct "Specific Performance" of such an agreement by him. But a contract entered into on behalf of minor by his guardian or by the manager of his estate is binding on the minor and can be specifically enforced by or against the minor provided

(a) The contract is within the authority of the guardian or manager

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

7. No Ratification

Ratification may be defined as the act of confirming or approving. The doctrines of 'no ratification' implies that on agreement made by a minor can not be confirmed by him on attaining majority. This is so because minor's agreement is void-ab-initio and therefore can not be made valid by ratification.

Thus if an advance is made to minor during his minority, a promise to pay for such amount after he attains majority would not be enforceable. "The consideration which passed under the earlier contract cannot be implied into the contract into which the minor enters on attaining majority"(Nazir Ahmed Vs Jiwan Dass). Since ratification relates back to the date when the contract was originally made, it is necessary for a valid ratification that the person who purports to ratify must be competent to contract at the

14. Position of Minor's parents.

Minor's contracts do not impose any liability on his parents even if the contracts are for necessaries. But the parent or guardians can be held liable when the minor child is acting as an agent of his parents or guardians.

15. Contracts of Apprenticeship and service.

A contract of apprenticeship is valid and binding upon a minor because such a contract is protected by the Apprentices Act 1961, provided the case falls within the terms of that act. The act inter alias, provides that the minor must not be less than 14 years of age and the contract must be entered into on behalf of the minor by his guardian.

II. PERSON OF UNSOUND MIND

According to section 12 of the Indian Contract Act reads as follows.

"A person is said to be of sound mind for the purpose of making a contract, if at the time when he makes it is capable

(a) to understand the terms of the contract

(b) to form a rational judgment as to its effect upon his interests"

Thus if a person is not capable of both he is said to have suffer from unsoundness of mind. The examples of persons having an unsound mind includes

(1) idiots

(2) Lunatics

(3) Drunken persons

POSITION OF A PERSON OF UNSOUND MIND.

Position of a person who is usually of unsound mind but occasionally of sound mind.

According to sec 12, "A person who is usually of unsound mind but occasionally of sound mind may make a contract when he is of sound mind.

> *Example*
>
> *A patient in a lunatic asylum who is at intervals of sound mind may contract during those lucid intervals.*

Position of a person who is usually of sound mind but occasionally of unsound mind.

According to sec 12, "A person who is usually of sound mind but occasionally of unsound mind may not make a contract when he is of unsound mind.

Example

A sane man who is so drunk that he cannot understand the terms of a contract or form a rational judgment as to its effect on his interest, cannot enter into contracts whilst such drunkenness lasts.

POSITION OF AGREEMENTS WITH PERSONS OF UNSOUND MIND.

1. Lunatic:

Lunatic is a person whose mental faculties of thinking are deranges, i disordered due to some mental strain or some other reasons. However the mental powe of such person may not be completely lost.

Capacity to enter in to contract

While he is of unsound mind, he cannot enter into any contract. Any agreeme enter into by him during this period is altogether void and he cannot be held liab thereon.

While he is of sound mind, he can enter into a valid contract and he is liable fo such contracts.

2. Idiots:

An idiot is a person who has completely lost his mental faculties of thinkin Idiocy is a congenital defect caused by lack of development of the brain.

Capacity to enter into contract

He cannot enter into any contract. Any agreement enter into by him is altogethe void and he is not liable thereon.

3. Drunken Person:

Drunkard is a person who is under the influence of drinks or drugs. Drunkenness produces temporary incapacity, till the drunkard is under the effect of intoxication.

Capacity to enter into contract

If a person is so drunk, intoxicated or delirious from fever as to be incapable o understanding the nature and effect of an agreement or to form a rationa judgment as to its effect on his interest, his condition is similar to that of a lunati and on the same grounds as in the case of person of unsound mind he cannot enter into valid contracts whilst such delirium or drunkenness lasts.

Exceptions

The position of contracts with persons of unsound mind is identical with that o contracts with a minor. Thus the position of contracts with persons of unsoun mind is as under

CHAPTER 5

FREE CONSENT

5.1 CONSENT

Consent involves identity of minds in respect of the subject matter of the contract. In English law this is called 'consensus – ad-idem'.

According to section 13, 'Two or more persons are said to consent when they agree upon the same thing in the same sense.

When there is no consent at all, the agreement is void ab initio i.e. it is not enforceable at the option of either party.

5.2 FREE CONSENT

According to see 14, consent is said to be free when it is not caused by

a. Coercion (or)

b. Undue influence (or)

c. Fraud (or)

d. Misrepresentation (or)

e. Mistake

When there is consent but it is not free the contract is usually voidable at the option of the party whose consent was so caused.

> ***Example***
>
> *X threatens to kill Y of he does not sell his house to X. In this case, Y's consent has been obtained by coercion and therefore it can not be regarded as free.*

5.3 VARIOUS CAUSES OF FLAW IN CONSENT

5.3.1 COERCION

Coercion means forcibly compelling a Person to enter in to a contract. Coercion is threat or force used by one party against the other for making him to enter into an agreement.

See 15 of the act defines 'coercion is the committing or threatening to commit, any forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain property to the prejudice of any person whatever with the intention of causing any perso enter into an agreement'.

The above definition can be analyzed as follows:

1. Coercion implies a committing or threatening to commit some act which is contrary law. According to the above definition of coercion it may be in any of the following ac
   1. To commit an act forbidden by the Indian Penal Code (or)
   2. The threat to commit an act forbidden by the Indian Penal Code (or)
   3. Unlawful detention of any property (or)
   4. The threat to unlawful detention of any Property.

> ***Case law***
>
> ***Muthiah Chettiar Vs Kauppen Chetty (1927)***
>
> *An agent refused to hand over all the books of a business to the new ag unless the principal released him from liability in respect of all the past transactions was held by the Madres High Court that the release deed was voidable at the option the Principal as it was given under coercion.*

2. The act constituting coercion may be directed at any person, and not necessarily a other party to the agreement. Likewise it may proceed even from a stranger to contract.

> ***Example***
>
> *A threatens to shoot B, a friend of C if C does not let out his house to him. C agrees do so. The agreement has been brought about by coercion.*

3. It does not matter whether the Indian Penal Code is or is not in force in the place w the coercion is employed.

EFFECT OF THREAT TO FILE A SUIT

To threaten a criminal or civil prosecution does not constitute coercion because not an act forbidden by the Indian Penal Code. But a threat to file a suit on a false cl constitutes coercion for such an act is forbidden by the Indian Penal Code.

> ***Case law: Gobardhan Das Vs Jai Kishan Das***
>
> *A borrowed Rs. 1000 from B his friend. However no promissory note was exec by A at the time of taking the loan. Subsequently B requested A to execu promissory note in his favour to repay the loan. But A refused to do s*

- **The acts of coercion may be initiated by any person.**

  The threat amounting to coercion need not necessarily be initiated from a party to the contract. It may be initiated by any person even by a stranger. Similarly it may be directed against any person including a stranger.

- **The coercion may be by way of threat to commit suicide.**

  Some times by threat to commit suicide, a person obtains the consent of the other. In such cases also, the consent is said to be obtained by coercion.

- **The coercion may not be by way of threat to file a suit.**

  We have noted that committing or threatening to commit an act, forbidden by the Indian Penal Code, amounts to coercion.

5.3.2 UNDUE INFLUENCE

The term 'undue influence means the unfair use of one's superior power in order to obtain the consent of a person who is in a weaker position. In certain cases, the parties, to an agreement are so related to each other that one of them is in a position to dominate the will of the other. Sometimes a party is compelled to enter in to an agreement against his will because of an unfair persuation by the other party.

DEFINITION

The term 'undue influence' is defined in sec 16 of the Indian contract Act.:

Sec 16 (1) 'A contract is said to be induced by 'undue influence where

(i) The relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and

(ii) Uses the Position to obtain an unfair advantage over the other.

The phrase **in a position to dominate the will of the other** is clarified by the same sec under sub sec (2) thus.

Sec 16 (2) A person is deemed to be in a position to dominate the will of another

(a) Where he holds a real (or) apparent authority over the other.

Ex: Relationship between master and servant

(b) Where he stands in a fiduciary relation to the other. Fiduciary relation means a relation of mutual trust and confidence.

Ex: Relationship between father and son

(c) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress etc".

There is no presumption of undue influence in the following cases.

(i) Husband and wife (In case of persons engaged to marry, the presumption of undue influence will arise).

(ii) Mother and daughter.

(iii) Grandson and grandfather.

(iv) Landlord and tenant.

(v) Creditor and debtor.

In these cases, undue influence shall have to be proved by the party alleging that undue influence existed.

COMPARION BETWEEN COERCION WITH UNDUE INFLUENCE

Similarities

- In both cases consent of rte parties are not free.
- In both cases the contract is voidable at the option of the party whose consent is not free.

Distinctions

S.No	Coercion	Undue influence
1	Under coercion the consent is given under the threat of an offence	Here the consent is given under moral influence.
2	Coercion involves he use of physical or violent force	In involves the use of moral force or mental pressure
3	Coercion includes criminal act and involves criminal liability	But in undue influence there is no criminal act
4	Coercion may proceed from a third party	But in undue influence is exercised by the party to the contract
5	In coercion there must be an intention to cause any person to enter in to an agreement	Here the influencing party uses its position to obtain an unfair advantage over the other party

5.3.3 FRAUD

The term fraud may be defined as an intentional, deliberate or wilful misstatement of facts which are material for the formation of a contract. It includes all acts committed by a person with a view to deceive another person. To deceive means to induce a man to believe that a thing is true which is false?

DISTINCTION BETWEEN MISREPRESENATION AND FRAUD

	Misrepresentation	Fraud
1.	There is no intention to deceive the other party.	There is intention to deceive the other party.
2.	Misrepresentation is not an offence.	Fraud can become a criminal act punishable under Indian Penal Code.
3.	It is an innocent wrong.	The fraud is intentional (or) willful wrong
4.	The aggrieved party cannot avoid the contract if he has the means to discover the truth with ordinary prudence	The aggrived party has the means of discovering the truth with ordinary prudence
5.	Silence cannot become an action of misrepresentation	Generally silence is not fraud in the case of contracts of utmost good faith and those involving fiduciary relations silence can become fraud.

5.3.5 MISTAKE

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

DEFINITION

The term mistake may be defined as incorrect belief about something. It is in fact an erroneous (or incorrect) belief which leads one party to misunderstand the other. It generally takes place where the concerned parties are not fully aware of the terms of the agreement and they take the terms in a different sense.

DIFFERENT TYPES OF MISTAKE

I. MISTAKE OF LAW

Mistake of Indian law: The contract is not voidable because everyone is supposed to know the law of his country.

Mistake of foreign law: It is treated as mistake of fact. i.e. the contract is void if both the parties are under a mistake as to a foreign law because one cannot be expected to know the law of other country.

II. MISTAKE OF FACT

Mistakes of fact can be bilateral mistake and unilateral mistake

CHAPTER 7

VOID AGREEMENTS

7.1. INTRODUCTION

Sec 2(g) of the Indian contract act, had defined the expression 'void agreements' as follows-" agreement not enforceable by law is said to be void" In other words the agreement which the court of law will not enforce is a void agreement. A void agreement is void ab initio. It does not create any legal rights or obligations.

7.2. DIFFERENT TYPES OF VOID AGREEMENTS.

An agreement can be void because of mistake, lack of consideration, want of capacity etc. A list of such agreements is given below

1. **Agreements by persons who are not competent to contract.**
2. **Agreements made under a bilateral mistake of fact.**
3. **Agreements with unlawful considerations and object.**
4. **Agreements by which the consideration or object is unlawful , in part**
5. **Agreements without consideration**
6. **Agreement in restraint of trade**
7. **Agreements in restraint of marriage.**

Agreements 1 to 7 have already been discussed in earlier chapters.

8. Agreements in restraint of legal proceedings

According to sec.28 the following two agreements amount to restraint of legal proceedings and thus void to the extent

a) Agreements restricting enforcements of rights

An agreement by which any party is restricted absolutely from enforcing his legal rights under or in respect of any contract is void to that extent.

There are two exceptions to the above rule.

CHAPTER 8

CONTINGENT CONTRACT

8.1. DEFINITION

A contingent contract is contract to do or not to do something if some event collateral to such contract does or does not happen. Insurance contracts provide the best example of contingent contracts

A contracts to pay B Rs.10000 if B's house is burnt. This is a contingent contract.

8.2. CHARACTERISTICS OF A VALID CONTINGENT CONTRACT

A valid contingent contract must satisfy these essential requirements.

There must be a valid contract:

A contract to do or not to do something must be legally valid i.e it must fulfill the basic requirement of a valid contract.

The performance of the contract must be conditional:

The performance of a contingent contract must depend upon the happening or non happening of some future event.

The event must be uncertain:

The future event upon which the performance of a contract depends must be a uncertain event. If the event is certain then the contract is not a contingency contract.

Example :

A agreed to sell his agricultural land to B after obtaining the necessary permission from the collector. As a matter of course, the permission was generally granted on certain formalities. It was held that the contract was not a

The event must be collateral to the contract

Collateral event:

Collateral event means an event which is neither a performance directly promised as part of the contract nor the whole of the consideration for a promise. It is another important requirement of a valid contingent contract the uncertain events upon which the performance of the contract is dependent, must not form a part of consideration of the contract.

The event may be an act of the party:

For the purpose of a contingent contract the word event also includes the 'act of party'. Thus a contract which is dependent upon some 'act of the party' is also a contingent contract.

The event should not be at the discretion of the promisor:

The 'mere will or discretion of the promisor' is not an event for the promise of the contingent contract. Thus if the performance of a contract depends upon the sweet will or discretion of the promisor, the contract is not a contingent contract. Such a contract is void on the ground of uncertainty.

8.3. LEGAL RULES REGARDING ENFORCEMENT OF CONTINGENT CONTRACT.

A contingent contract cannot be enforced till the event, on which it was dependent has arisen. The rules regarding the enforcement of contingent contracts are contained in the sections 32 to 36 of the Indian Contract Act which may be discussed under the following heads.

A) Contingent Contracts dependent on the happening of future uncertain event (Sec.32)

Sometimes a contingent contract is dependent on the happening of a future uncertain event. In such cases the contract can be enforced only when that uncertain event has happened. If the event becomes impossible then such contract becomes void and thus cannot be enforced by law.

Example :

A makes a contract with B to sell a horse to B at a specified price, if C to whom the horse has been offered, refuses to buy him. The contract cannot be enforced by law unless and until C refuses to buy the horse.

B) Contingent contracts dependent on the non happening of future uncertain event (Sec.33)

In these cases the contract can be enforced only when the happening of that event becomes impossible as then that cannot happen. And then the contract becomes

enforceable as its performance was dependent on the non-happening of that event. If the event happens or does not become impossible then such contracts become void and cannot be enforced by law.

Example :

A agrees to pay B a sum of money if a certain ship does not return. The ship is sunk. The contract can be enforced when the ship sinks. Because when the ship sinks the event becomes impossible as the ship can never return.

C) Contingency contracts dependent on the 'happening' of specified uncertain event within fixed time (Sec.35)

Sometimes a contingent contract is dependent on the 'happening' of a specified uncertain event within fixed time. In such cases the contract can be enforced if that event happens within the fixed time.

Example :

A entered in to a contract with B to buy his house if C died within one year.. It is a contingent contract and can be enforced by law if C dies within one year.

Thus a contingent contract dependent on the happening of specified uncertain event within fixed time becomes void in the following cases.

a) If the event does not happen within the specified time.

b) If before the expiry of that time the event becomes impossible.

D) Contingent contracts dependent on the 'non-happening of specified uncertain event within fixed time

Sometimes a contingent contract is dependent on the non-happening of a specified uncertain event within fixed time. In such cases the contract can be enforced if that event does not happen within fixed time or if it becomes certain, that such event will not happen.

Example :

A agreed to sell his house to B for Rs.1,00,000, if his father did not return from Japan within five years. It is a contingent contract and can be enforced if A's father does not return within five years.

E) Contingent contracts dependent on impossible events

In these cases the contract is void and cannot be enforced by law. The contract is void because it can never be enforced as the impossible event will never happen. It may be noted that such a contract will be void whether the impossibility of the event

A agreed to pay Rs. 1,000 to B if B would marry A's daughter C. But C was died at the time of the agreement. This is a void agreement as B's marriage with C can never taken place.

8.4 DIFFERENCE BETWEEN CONTINGENT CONTRACT AND A WAGERING AGREEMENT.

S.No	Contingent Contract	Wagering agreement
1.	It is perfectly valid and can be enforced in a court of law.	It is absolutely void and cannot be enforced in a court of law.
2.	The parties are interested in the subject matter of the contract.	The parties have no other interest in the subject matter of the agreement except for the sum of the stake they will win or lose.
3.	In this case the future uncertain event is merely collateral (or) incidental.	In this case the uncertain event is the only determining factor.
4.	In this case there may not be reciprocal promises.	In this case there are reciprocal promises
5.	All contingent contracts are not of a wagering nature, because all the contingency contracts are not void.	All wagering contracts are also contingent contracts, because they are dependent on uncertain events.

1. What do you
for a valid c
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CHAPTER 9

QUASI CONTRACTS

9.1 INTRODUCTION

It is an obligation imposed by the law upon a person for the benefit of another even in the absence of a contract. It is based on the principle of equity, which means no person shall be allowed to unjustly enrich himself at the expense of another. Such obligations are called quasi-contracts (or) implied contracts, because the outcome of such obligations resembles those created by a contract. Quasi-contract is a kind of contract by which one party is bound to pay money in consideration of something done or suffered by the other party. These contracts are based on the maxim 'no man must grow rich out of another person's cost'. Again quasi-contract is to prevent unjust enrichment or unjust benefit i.e. no one should grow rich out of another person's loss.

The term quasi-contract may be defined as 'a relation which resembles that created by a contract'

9.2 FEATURES OF A QUASI-CONTRACT

The salient features of a quasi-contract are as under.

- It is imposed by law and does not arise from any agreement.
- The duty of a party and not the promise of any party is the basis of such contract.
- The right under it is always a right to money and generally though not always to a liquidated sum of money
- The right under it is available against specific persons and not against the world.
- A suit for its breech may be filed in the same way as in the case a complete contract.

9.3 TYPES OF QUASI-CONTRACT

The different types of quasi-contractual obligations which the Indian Contract Act deals with are contained in Sec68 to 72. They are

1) Claim for necessaries supplied (Sec.68)

If a person incapable of entering into a contract or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person (Sec.68)

The following points should be noted.

a) The goods supplied must be necessaries and what will constitute necessaries shall vary from person to person depending upon the social status he enjoys.

b) It is only the property of the incapable person that should be liable. He cannot be held liable personally. Thus where he does not own any property, nothing shall be payable.

c) Necessaries should be supplied only to such incompetent person or to some one whom he is legally bound to support such as his wife and children.

d) Incompetent person's property is liable to pay only a reasonable price for the goods or services supplied and not the price which the incompetent person might have 'agreed to'

Example:

A supplies B , a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property.

2) Payment by an interested person (Sec.69)

According to Sec. 69 of the act, "A person who is interested in the payment of money which another is bound by law to pay and who therefore pays is entitled to be reimbursed by the other.

The applicability of this section is subject to the following conditions

- The defendant should be bound by law to pay.

Example:

A's goods were wrongly attached to realize the arrears of Government revenue due by B. A pays the dues to save the goods from being sold. He is entitled to recover the amount from B.

- The plaintiff shall be interested in making the payment in order to protect his own interest and the payment should not be voluntary one.

Example:

A pays the arrears of rent of his neighbour B, just to avoid a struggle between B and his landlord. A cannot recover from B as he acted voluntarily and had no interest of his own in the payment.

- The payment must not be such as the plaintiff himself is bound to pay.

Example:

A and B have been fined jointly Rs.500 for selling adulterated Ghee. A alone pays the amount of fine in good faith. A can not later claim contribution from B under Section 69. Notice that although B was bound by law to pay and A has paid B's share in good faith. Yet A can not recover as he himself was bound to make the payment, being jointly liable with B and was simply interested in making the payment. (A can however claim contribution from B under Sec 43).

3) Benefit of Non gratuitous act (Sec.70)

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

For application of this section, the following conditions must be fulfilled.

1. The thing must have been done lawfully in good faith. This means that the act done must be in pursuance of the implied wishes and in the presence of the other party, giving him the full choice to reject the thing or service.
2. The person doing the act must not have intended to do it gratuitously and
3. The person for whom the act is done must have enjoyed the benefit of the act.

Example:

a. *A, tradesman, leaves goods at B's property by mistake. B treats the goods as his own. He is bound to [ay A for them.*

b. *A , saves B's property from fire. A is not entitled to compensation from B if the circumstances show that he intended to act gratuitously.*

c. *Where a coolie takes the luggage at the railway station without being asked by the passenger and if the passenger does not object to that, then he is bound to pay reasonably for the same as the work was not intended to be gratuitous.*

4) Responsibilities of finder of goods (Sec.71)

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"

Responsibilities of finder of goods

- He is bound to take as much care of the goods as man of ordinary prudence

CHAPTER 10

PERFORMANCE OF A CONTRACT

10.1 INTRODUCTION

A contract is said to have performed when the parties to a contract either perform or offer to perform their respective promises. Sec.37 of the Indian Contract Act of the Indian Contract Act lays down the obligation of the parties regarding performance. According to this Section "the parties to a contract must either perform or offer to perform their respective promises, unless such performance is dispended with or excused under the provisions of this act or any other law"

10.2 DIFFERENT TYPES OF PERFORMANCE

Actual performance

When a party to a contract does what he had undertaken to do under the contract he is said to have actually performed his obligation to the contract and it is known as actual performance. Then it becomes the duty of the other party to do what he had agreed to do under the contract.

Attempted performance (or tender) or (offer of performance)

When a promisor has made an offer of performance to the promise, and the offer has not been accepted by the promise, it is called an attempted performance. There are two effects of tender such as the promisor is not responsible for non-performance and the promisor does not loose his rights under the contract.

DIFFERENT TYPES OF TENDER

Tender of goods (or) Services: Where the promisor offers to deliver the goods or services but the promisee refuses to accept the delivery.

Effects

- Goods or services need not be offered again
- Promisor may sue the promisee for non performance.
- Promisor is discharged from his liability.

Tender of money: Where the promisor offers to pay the amount but the promisee refuses to accept the same

Effects

- Promisor is not discharged from his liability to pay the amount
- Promisor will not be liable for interest from the date of valid tender

Effect of refusal of correct tender

- Promisor becomes free from his responsibilities to the contract
- His rights against the promise as per the contract continue.

ESSENTIALS OF A VALID TENDER

a. **Unconditional:** Valid tender of performance must be an unconditional one. Tender is said to be unconditional when it is made in accordance with the terms of contract

b. **At proper time** : It must be at proper time or during business hours otherwise it is not a proper tender. A tender before or after the due date other than agreed upon is not a valid tender. Where no time is fixed then it is valid to make the tender within reasonable time.

> *Example :*
> *A owes B Rs.500 payable on 1st October with interest. B offers to pay the principal amount with interest up to September 1st. It is not made at the agreed time.*

c. **At proper place:** It must be at proper place i.e. at the stipulated place or at promisee's business place or at promisee's residence.

d. **Reasonable opportunity to promise:** It must give a reasonable opportunity to promisee of ascertaining that the goods offered are the same as the promisor is bound to deliver.

> *Example*
> *A contracts to deliver B at his warehouse, on the 1st March, 100 bales of cotton of a particular quality. In order to make an offer of performance, A must bring the cotton to B's warehouse on the appointed day under such circumstances that B may have a reasonable opportunity of satisfying himself that the thing offered is cotton of the quality contracted for and that there are 100 bales.*

e. **For whole obligation:** It must be for a whole obligation and not for the part of a whole obligation. However a minor deviation from the terms of the contract may not render the tender invalid.

10.4 WHO MUST PERFORM THE CONTRACT

Depending upon the intention of the parties the contract may be performed by the following persons

- Promisor
- Promisor's agent
- Legal representatives
- Third party
- Joint Promisors

	Case	Who must perform the promise
1.	In case all the promisors are alive	All the promisors jointly
2.	In case of death of any one of joint promisors	Representatives of the deceased promisor jointly with the surviving promisors
3.	In case of death of all joint promisors	Representatives of all of them jointly

Persons who can demand performance

- Promisee
- legal representatives
- Third party
- Joint promises

	Case	Who can demand the performance of promise
1.	In case of all the promisee's alive	All the promisees jointly
2.	In case of death of any of joint promisees	Representatives of deceased promise jointly with the surviving promisees
3.	In case of death of all joint promisees	Representatives of all of them jointly

10.5 DEVOLUTION OF JOINT LIABILITIES AND JOINT ASSETS.

Meaning of devolution: Devolution means passing over from one person to another.

Devolution of joint liabilities: The liabilities of joint promisors pass to their legal representatives.

CHAPTER 11

DISCHARGE OF A CONTRACT

11.1 INTRODUCTION

A contract is said to be discharged when the rights and obligations of the parties under the contract come to an end. Discharge of a contract means termination of the contractual relations between the parties to a contract.

11.2 VARIOUS MODES OF DISCHARGE OF CONTRACT

Following are the various modes in which a contract may be discharged.

I. Discharge by performance of contract:

Performance is the usual mode of discharge of a contract. The contract is said to be discharged when parties to a contract, perform their respective obligation which they have agreed to do. That is when the parties to a contract fulfill their obligations arising out of the contract within the time and in the manner prescribed, the contract is said to have been discharged by performance.

II. Discharge by mutual agreement:

Since a contract is crated by mutual agreement, it can also be discharged by mutual agreement. A contract can be discharged by mutual agreement in any of the following way. The consent may either be (i) Express or (ii) Implied. The various cases of discharge of a contract by mutual agreement are dealt with in Secs. 62 and 63 and are discussed below.

a. **Novation:** Novation means the substitution of a new contract for the original contract. Such a new contract may be either between the same parties or between different parties. The consideration for the new contract is the discharge of the original contract.

> ***Example :***
>
> *A is indebted to B and B to C. By mutual agreement B's debt to C and B's loan to A are cancelled and C accepts A as his debtor. There is novation involving change of parties.*

Rules regarding 'Novation' are as follows.

- Novation must be done before the expiry of the time of performance of the original contract.
- It is possible only by mutual consent of the parties and may not be compulsory.
- New contract replacing the old one must be capable of legal enforcement.
- It must substitute the present contract. An agreement to substitute a contract in futire will not be novation.
- As a result of novation, old contract is totally discharged and law does not entertain any action based upon the terms of the old contract.

b. **Rescission:** Rescission means cancellation of the contract by any party or all the parties to a contract. An agreement of recession releases the parties from their obligations. Recession may take place in any of the following modes.

1. By mutual consent of the parties.
2. By aggrieved party.
3. By the party whose consent is not free.
4. Non performance till the long time.

Example :

X promises Y to sell and deliver 100 Bales of cotton on 1st Oct, at his Godown and Y promises to pay for goods on 1st November. X does not supply the goods. Y may rescind the contract.

c. **Alteration:** alteration means a change in the terms of a contract with mutual consent of the parties. Alteration discharges the original contract and creates a new contract. However parties to the contract new contract must not change.

The difference between "novation" and "alteration" may be noted. In case of novation there may be a change of parties also while in case of alteration parties remain the same, only the terms of a contract are altered.

Example :

A enters into a contract with B for the supply of a machine at his warehouse on 1st February. Later both A and B agree to postpone the date of delivery to 1st March. This change amounts to alteration of the contract.

d. **Remission:** Remission means acceptance by the promises of a lesser fulfillment of the promise made. A contract may be discharged by remission of performance or extension of time or by acceptance of any other satisfaction by the promise.

Example :

If the promise agrees to accept Rs.2,000 in full satisfaction of a claim of Rs.5,000, the promise is enforceable and the promisee cannot in future bring a suit for the recovery of Rs.5,000.

e. **Waiver:** Waiver means intentional relinquishment of a right under the contract. Thus it amounts to releasing a person of certain legal obligation under a contract.

Example :

A agrees to repair the car of B. B later on forbids A to repar the car. A is no longer bound to perform the promise. Thus the contract is terminated by the waiver.

f. **Merger :** Merger takes place when an inferior right accruing to a party, under a contract merges into a superior right accruing to the same party either under the same or the other contract. In such cases, the inferior rights merge into the superior rights. And on merger the inferior rights vanish and are not required to be enforced.

Example :

A purchases a house, which he was having on lease. His right as a lessee will merge into his right as an owner, as right of a lessee is inferior to the right of the owner.

III. Discharge by operation of law

a. **By death of the promisor:** a contract involving the personal skill or ability of the promisor is discharged on the date of the promisor.

b. **By insolvency:** When a person is declared as insolvent, he is discharged from his liability up to the date of his insolvency.

c. **By unauthorized material alteration:** If any party makes any material alteration in the terms of the contract without the approval of the other party the contract comes to an end.

d. **By the identity of promisor and promisee:** when the promisor becomes the promisee the other parties are discharged.

IV. Discharge by impossibility of performance:

A contract is discharged if its performance becomes impossible. In other words there is no question of discharge of a contract which is entered in to perform something that is obviously impossible. The impossibility in these cases is inherent in the transactions such a contract is void ab initio. The impossibility of performance may be of two types.

CHAPTER 12

REMEDIES FOR BREACH OF CONTRACT

12.1 INTRODUCTION

A breach of contract occurs if any party refuses or fails to perform his part of the contract or by his act makes it impossible to perform his obligation under the contract. In case of breach, the aggrieved party is relieved from performing his obligation and gets a right to proceed against the party at fault.

12.2 TYPES OF BREACH OF CONTRACT

Anticipatory breach of contract

Anticipatory breach occurs when the party declares his intention of not performing the contract before the performance is due. Thus when a party refuses to perform a contract even before it is due for performance it is called anticipatory breach.

A party may declare his intention of not performing the contract in the following two ways.

- When a party to a contract has refused to perform his promise.
- When a party to a contract has disabled himself from performing his promise in it's entirely.

The aggrieved party has the following two options.

1. He can rescind the contract and claim damages for breach of contract without waiting until the due date for performance.
2. He may treat the contract as operative and wait till the due date for performance and claim damages if the promise still remains unperformed.

Actual breach of contract

Actual breach of contract may take place in any of the following two ways.

- **On due date of performance:** If any party to contract refuses or fails to perform his part of the contract at the time fixed for performance, it is called an actual breach of contract on due date of performance.

- The damages must be proximate consequence of the breach of contract and not the indirect consequence.

b. **Special damages:** Special damages are those which may reasonably be supposed to have been in the contemplation of both parties as the probable result of the breach of a contract. These damages can be recovered if the special circumstances which would result in a special loss in case of breach of a contract are communicated to the promisor.

c. **Exemplary or punitive or vindictive damages:** Exemplary damages are those which are in the nature of punishment. The court may award these damages in case of

- A breach of promise to marry, where damages shall be calculated on the basis of mental injury sustained by the aggrieved party.
- Wrongful dishonour of a cheque by a banker.

d. **Nominal damages:** These damages are those which are awarded where there is only a technical violation of a legal right but the aggrieved party has not in fact suffered any loss because of breach of contract. These damages are called nominal because they are very small say one rupee. The court may or may not award say one rupee. The court may or may not award these nominal damages.

e. **Damages for inconvenience and discomfort:** If a party has suffered physical inconvenience and discomfort due to breach of contract, that party can recover the damages for such inconvenience and discomfort.

f. **Liquidated damages and penalty:** When the parties to a contract at the time of formation of contract, specify a sum which will become payable by the party responsible for breach such specified sum is called

i. Liquidated damages if the specified sum represents a fair and genuine pre estimate of the damages likely to result due to breach.

ii. Penalty if the specified sum is disproportionate to the damages likely to result due to breach.

g. Stipulation for interest: The stipulation for interest may or may not be in the nature of a penalty. If the stipulation for interest is in the nature of a penalty, the court may award reasonable compensation only.

h. Forfeiture of security deposit: A clause in a contract which provides for feature of security deposit in the event of failure to perform is in the nature of a penalty. In such cases the court may award reasonable compensation only.

Suit for specific performance:

Suit for specific performance means demanding the courts's direction to the defaulting party to carry out the promise according to the terms of the contract.

CHAPTER 13

CONTRACT OF INDEMNITY AND GUARANTEE

13.1 INTRODUCTION

The term indemnity means to make good the loss to compensate the party who has suffered some loss. Sec.124 of the Indian contract act defines a contract of indemnity thus, "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person is called a "contract of indemnity". The person who promises to make good the loss is called the indemnifier. The person whose loss is to be made good is called the 'indemnity holder'

> *Example:*
>
> *A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum Rs.200. This is a contract of indemnity.*

13.2 ESSENTIALS OF A VALID CONTRACT OF INDEMNITY

- The contract of indemnity must contain all the essentials of valid contract.
- It is contract between two parties one person promises to save the other from any loss, which he may suffer.
- The loss may be caused by the conduct of the promisor himself or any other person.
- The contract of indemnity may be express or implied.

13.3 RIGHTS OF INDEMNITY HOLDER

1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
2. All costs which he may be compelled to pay, in bringing or defending such suit, if, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity or if the promisor authorized him to bring or defend the suit.
3. All sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one

13.7 ESSENTIALS OF A CONTRACT OF GUARANTEE

Following are the essential features of a valid contract of guarantee.

1. **Tripartite agreement:**

   A contract of guarantee is a tripartite agreement between the principal debtor, creditor and surety

2. **Consent of three parties:**

   There must be consent of all three parties

3. **It may be oral or in writing:**

   A contract of guarantee may be either oral or in writing. Whereas, as per English law, the guarantee must be in writing and signed by the party who offers guarantee.

4. **Existence of Liability:**

   There must be an existing liability or a promise whose performance is guaranteed and such liability must be enforceable by law. The exception to this rule is a guarantee given for minor's debt. Though minor's debt is not enforceable by law, yet the guarantee given for minor's debt is valid.

> *Example:*
>
> *X took a loan of Rs.10000 from Y on 1st Jan 1993 and paid nothing on all of interest and principal. On 2nd Jan 1996, Z gave the guarantee to Y for the payment of Rs.10000 due from X. This is not valid contract of guarantee because the primary liability between X and Y is a time barred debt which is not enforceable by law.*

5. **Essentials of a valid contract:**

   All the essential of a valid contract must be present in a contract of guarantee. However the following points are worth noting in this regard.

   (a) The principal debtor need not be competent to contract and the surety would be regarded as the principal debtor and would be personally liable to pay.

   (b) Surety need not be benefited. Anything done or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee.

6. **Guarantee not to be obtained by misrepresentation:**

   Any guarantee which has been obtained by means of misrepresentation made by or with his knowledge and assent, concerning a material part of the transaction is invalid.

7. The contract of guarantee must be supported by consideration

We have discussed above that a contract of guarantee must have all the essentials of a valid contract. It will be interesting to know that it is not necessary that there should be direct consideration between the surety and creditor. The law presumes that the consideration received by the principal debtor is the sufficient consideration for the surety.

8. The promise to pay must be conditional

It is another important essential element of a contract of guarantee. There must be a conditional promise to be liable on the default of the principal debtor.

9. There should be no concealment of facts

The creditor should disclose to the surety the facts which are likely to affect the surety's liability. The guarantee obtained by the concealment of such facts is invalid.

13.8 IS A CONTRACT GUARANTEE A CONTRACT OF UBERRIMAE FIDEI

A contract guarantee is not a contract of Uberrimae Fidei (i.e. a contract of absolute good faith) and hence it is not necessary for the principal debtor or the creditor to disclose all the material facts to the surety before he enters into the contract. However the provisions of sections 142 and 143 give some protection to the surety by making the following guarantee as invalid.

- A guarantee obtained by misrepresentation
- A guarantee obtained by concealment of material facts
- Not joining by Co-surety

13.9 DISTINCTION BETWEEN A CONTRACT OF INDEMNITY AND CONTRACT OF GUARANTEE

	Contract of Indemnity	Contract of Guarantee
1.	There are two parties – the indemnifier and the indemnity holder	There are three parties- the creditor, the principal debtor and the surety
2.	The liability of the indemnifier is primary	The liability of the primary debtor is primary. The liability of the surety is secondary. That is the surety is liable only if the principal debtor fails.
3.	There is only one contract	There are 3 contracts

4.	Indemnifier need not act on the request of indemnified	Surety gives guarantee on the request of principal debtor
5.	The liability of indemnifier arises on the happening of a contingent event	There is an existing debt or duty, the performance of which is guaranteed by the surety.
6.	An indemnifier can not sue a third party for loss in his own name because there is no privity of contract	A surety on discharging the debt due by the principal debtor, can take action against the principal debtor for his own recovery
7.	It is for reimbursement of loss	It is for the security of the creditor for ensuring his payment
8.	The promisor has some interest in the transaction, apart from indemnity	The surety gets nothing substantial for his promise.

13.10 KINDS OF GUARANTEE

Types of contract of guarantee are

a) Simple or specific guarantee

It is one in which guarantee is given for a single specific debt (or) transaction. It comes to an end as soon as the liability under that transaction ends. A specific guarantee once given is irrevocable.

Example

X gave his godown to Y on a lease for 10 years on a lease rent of Rs.12,000 P.a. Z guaranteed that Y would fulfill his obligations. This is a contract of specific guarantee because the lease for 10 years is entirely an indivisible transaction and cannot be classified as a series of distinct transactions.

b) Continuing guarantee

A guarantee which extends to a series of transactions is called a continuing guarantee. A surety's liability continues until the revocation of the guarantee.

Example :

On S's recommendation C employed P for the collection of rent from his tenant. S promised to make good any default made by P. this is a contract of continuing guarantee

CHAPTER 14

CONTRACT OF BAILMENT AND PLEDGE

14.1 INTRODUCTION

A bailment is a contract, which results from the delivery of goods. It implies a sort of relationship in which the personal property of one person temporarily goes into the possession of another person for some specific purpose. It may be noted that the ownership of the articles or goods remains with one person while the possession is with another person.

The term 'bailment' is defined in sec.148 of the Indian Contract Act, which reads as follows "A bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the persons delivering them".

14.2 PARTIES TO A CONTRACT OF BAILMENT

Bailor: The person who delivers the goods is known as the bailor

Bailee: The person to whom the goods are delivered for specific purpose is known as the bailee.

> *Example :*
>
> *A deposited his luggage in a cloak room at the railway station. This is a contract of bailment between A and the Railways.*

14.3 ESSENTIAL FEATURES OF A VALID BAILMENT

The legal definition of bailment reveals the essential features of bailment which are as under.

a) **Agreement:** There must be an agreement or contract between the bailor and the bailee. This agreement may be either express or implied. The agreement is that the goods are to be returned when the purpose is fulfilled. The condition is that the goods should be returned either in their original form or in altered form.

5.	The bailee can use the goods only according to the directions of the bailor	The consideration for a sale is the price in terms of money

4) DISSOLUTION

a) **Bailment for the exclusive benefit of the bailor:**

It is a contract of bailment which is executed only for the benefit of the bailor and the bailee does not derive any benefit from it. Eg: If, who is going out of station delivers a horse to X for proper care.

b) **Bailment for the exclusive benefit of the bailee:**

It is a contract of bailment which is executed for the benefit of the bailee and the bailor does not derive any benefit from it. Eg: X lends a horse to Y for his riding without any charges.

c) **Bailment for mutual benefit:**

It is a contract of bailment which is executed for the mutual benefit of bailor and bailee.

d) **Gratuitous bailment:**

It is a contract of bailment where no consideration passes between the bailor and the bailee.

e) **Non-gratuitous bailment:**

It is a contract of bailment where some consideration passes between the bailor and the bailee.

5) DIFFERENCE BETWEEN GRATUITOUS AND NON GRATUITOUS BAILMENT

	Gratuitous Bailment	Non-gratuitous Bailment
1.	No consideration between the bailor and the bailee	Some consideration passes between the bailor and the bailee
2.	It is for the exclusive benefit of the bailor and the bailee	It is for the mutual benefit of the bailor and the bailee
3.	The bailor is not liable to the bailee for known defects	The bailor is liable to the bailee for the known defects
4.	The bailee must return to the bailor at the	The bailee must return to the bailor