Subject :

Law of Contract - I

Paper : 1.3

10 YEARS CELEBRATION

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SUBJECT TOPICS

1. Formation of Contract
2. Capacity to Contract and Free Consent
3. Discharge of Contract by Performance and Quasi Contract
4. Breach of Contract and Remedies

Formation of Contract:-

A modern industrial society is primarily built upon the fabric of **'contract'**. The relational integration and determination of mutual rights and obligations to a great extent, are dependent on **ex-contractum** (out of contract) terms. There is contract around, between employer and the employees, producers and distributors, vendors and the customers, carrier and the buyer of services and the like. Even family relations also start with contract, marriage being either a contractual relation or similar to it. The very basic principle of market functioning in the early period of mercantilism and industrialization was laid down on the efficient functioning of contractual relation by relative assessment of rights and duties arising out of a contract. In a modern state, government is also becoming a very important party in contractual relations. It is, therefore, necessary to understand how and when parties enter into such a contract in order to examine their mutual rights and obligations, and the time of origination of such rights and obligations.

EARLY HISTORY OF CONTRACT LAW

Generally speaking history of human civilization has experienced several legal systems. Some of which are still in vogue in pure or moderated form. Leading legal systems are:

1. Ecclesiastical/religious system is based on the religious, textual and customary processes induced through religious faith and belief ;
2. Romana-Germanic system is based on growing codification on logical foundation as well as clear customary practices which are secular in character. One of the earliest code was Justenian code;
3. Civil law system based on a well-structured constitutional legal regime with inquisitorial procedural system. Western European countries follow this system;
4. Socialist system with high public interest involved specially on the issue of freedom of contract; and
5. Common law system which provided golden opportunity for mercantilism and capitalism to develop with rapid industrialization. Besides, more than half of the globe was under the domination of this common law system under the British in eighteenth, nineteenth and early twentieth centuries.

In Common law, Law of Contract was carved out of the law of tort in the fourteenth and fifteenth centuries. Initially, three 'writs' ('Writ' is a specific order/direction by the court to act in a manner specified) used to play a very important key role. In case of agreements of loan and credit Writ of debt was issued. In clear cases of agreements, especially in writing, on transfer of landed properties writ of covenant was issued asking the party to perform his part and writ of trespass was issued in the event of any party to the contract of quasi contractual situation transgressing the rights acquired by the other party. Another writ to provide remedy in the event of a party to the contract committing breach, known as Writ of deceit was also issued. Trespass was issued in the event of physical injury to person and property and deceit was issued in wide range of cases. Similarly a composite writ of debt-debtenu used to be issued in a situation where the defendant used to unjustly detain something, on which, the plaintiff had the claim or was entitled to possess. Of course the functional distinction between the writs could not be very clearly stated now. One can, of course, start carefully tracing the history?

Taken from B. In all these above cases the plaintiff could seek justice against the action or inaction of the defendant. The court used to issue writs in order to deliver justice to the plaintiff by appropriately designing a simple or compound writ. But as matters got complicated during the period of mercantilism at the early part of industrialization, different theoretical foundations were necessary to legally bind parties in different contractual situations. In early sixteenth century the court of King's Bench formulated another remedy known as **Assump- sit.** One could trace the conflict of ideas or remedying in the event of breach of contract between court of King's Bench and court of Common pleas. Anyway, according to the court of King's Bench under every executory contract the parties used to assume or promise to pay an amount or deliver goods. Thus action on assumpsit was held to be more appropriate than the limited applications of writs. 'Writs' had pigeon-hole application whereas contract required a wider legal remedies, especially when contract of services were also involved during the period of early industrialization. In actions of assumpsit during the earlier period there was scope for speculation as to the matter of promise gratuitously made. Gradually, English courts held that a **'quid pro quo'** would be required in all cases of promises to be legally binding excepting where a promise is **ipso facto** made binding under court's seal [This is explained in detail subsequently on consideration]. With the rapid growth of industrialization in the last hundred and fifty years, importance of contract could not be overestimated in all legal systems. Moral foundations of a promise to make it legally binding in religious or ecclesiastical systems, could not hold the system. The principle of **'pacta Sunt Servanda'** of Romano-Germanic system meaning thereby, promise once made is binding or 'one must observe one's words given to other, else he takes the course of the God', a principle of the ecclesiastical system could not hold the test of time. Rapid industrialization required more transparency in the legal system. Gradually more and more countries started codification of the law of contract. India however, has its codified contract law enacted in 1872. One can easily understand the benefits of codification, VIP.,

1. transparency of law at any given point of time ;
2. easy public accessibility ; and
3. Amenability with the change of time and need.

The argument made by common law advocates against codification **is that** it makes law more rigid as com- pared to the judge made law, is untenable. Judges by their nature of training and work, tend to become rigid and *Status quoist* (meaning person supporting status quo). Hence Common Law system based upon case law became mostly non-dynamic specially before Karl Marx came on the scene. Legislative process, on the other hand, is bound to respond quickly to the requirement of time. Members of the legislature as represent the people so they understand well the need of the time and the people in better way.

In fact with rapid globalization of economic production relations and quicker communication links, a uniform commercial code is bound to come for the whole world in the long run. The movement is already felt strongly. Through multi-lateral treaties and conventions many areas of the commercial contract have already been globally codified. Marine contracts, contracts of transnational services, tele-communication contracts, contracts of exports and imports, international commercial arbitration,. technology use contracts, contracts of Intellectual properties etc. are either already under some sort of globalized code or under high globalization. One can, at this stage, note the growing number of global legislations in the area of contract. Sir Henry Maine (Friedman, Law in a Changing Society, 119-120) is perhaps right when he said that

codification is a test of modernization of the legal system. One may further add to it by suggesting that universalisation and secularisation are perhaps other two attributes of the most advanced legal culture.

Meaning and Nature of Contract:-

The law relating to contract is governed by the Indian Contract Act, 1872. The Act came into force on the first day of September, 1872. The preamble to the Act says that it is an Act "to define and amend certain parts of the law relating to contract". It extends to the whole of India except the State of Jammu and Kashmir. The Act is by no means exhaustive on the law of contract. It does not deal with all the branches of the law of contract. Thus, contracts relating to partnership, sale of goods, negotiable instruments, insurance etc. are dealt with by separate Acts.

The Indian Contract Act mostly deals with the general principles and rules governing contracts. The Act is divisible into two parts. The first part (Section 1-75) deals with the general principles of the law of contract, and therefore applies to all contracts irrespective of their nature. The second part (Sections 124-238) deals with certain special kinds of contracts, namely contracts of Indemnity and Guarantee, Bailment, Pledge, and Agency.

The Indian Contract Act has defined contract in Section 2(h) as "an agreement enforceable by law".

Essential elements of a valid Contract:-

Section 10 of the Indian Contract Act, 1872 provides that "all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void".

The essential elements of a valid contract are:

(i) An offer or proposal by one party and acceptance of that offer by another party resulting in an agreement—consensus-ad-idem.

(ii) An intention to create legal relations or an intent to have legal consequences.

(iii) The agreement is supported by a lawful consideration.

(iv) The parties to the contract are legally capable of contracting.

(v) Genuine consent between the parties.

(vi) The object and consideration of the contract is legal and is not opposed to public policy.

(vii) The terms of the contract are certain.

(viii) The agreement is capable of being performed i.e., it is not impossible of being performed.

(a) Offer or Proposal and Acceptance:-

One of the early steps in the formation of a contract lies in arriving at an agreement between the contracting parties by means of an offer and acceptance. Thus, when one party (the offeror) makes a definite proposal to another party (the offeree) and the offeree accepts it in its entirety and without any qualification, there is a meeting of the minds of the parties and a contract comes into being, assuming that all other elements are also present.

(b) Intention to Create Legal Relations:-

The second essential element of a valid contract is that there must be an intention among the parties that the agreement should be attached by legal consequences and create legal obligations. If there is no such intention on the part of the parties, there is no contract between them. Agreements of a social or domestic nature do not contemplate legal relationship. As such they are not contracts.

(c) Consideration:-

Consideration is one of the essential elements of a valid contract. The requirement of consideration stems from the policy of extending the arm of the law to the enforcement of mutual promises of parties. A mere promise is not enforceable at law. For example, if A promises to make a gift of `500 to B, and subsequently changes his mind, B cannot succeed against A for breach of promise, as B has not given anything in return.

Sir Fredrick Pollock has defined consideration "as an act or forbearance of one party, or the promise thereof is the price for which the promise of the other is bought".

Section 2(d) of the Indian Contract Act, 1872 defines consideration thus: "when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise".

DEFINITIONS

In order to understand the law and technicalities of contract specially as to when and how a contract is made, we are required to have a clear understanding of denotative (area of application) and connotative (quality and attribute) definitions of some of the terminologies we use in this course.

(a) Proposal

In English common law a proposal is known as an offer. In every contract one party, generally speaking, is required to take initiative for proposing or offering a term which other party may accept if interested to make an agreement. A proposal or offer can be defined as 'an intimation by words or conduct, of a willingness to enter into a legally binding contract, and which in its terms expressly or implicitly indicates that it is to become binding on the offer or as soon as it has been accepted by an act, forbearance or return promise on the part of the person to whom it is addressed. (Guest, A.G, Anson's Law of Contract, (24th End, LPE), p.28) According to sec. 2(a) of the Indian Contract Act,1872 when a person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal. [See sec. 2(a)]

(b) Acceptance

According to sec. 2(b) of the Indian Contract Act, when the person to whom the proposal or offer is made signifies his assent thereto, the proposal is said to be accepted.

(c) Promise

According to sec 2(b) a proposal when accepted becomes a promise. Suppose A offers to sell his horse to B, and B accepts the offer, there is a promise.

(d) Agreement

To make a contract there has to be an agreement. An offer and acceptance constitute the agreement. According to sec. 2(e) of the Indian Contract Act, every promise and every set of promises, forming the consideration of each other, is an agreement'. Suppose A offers Rs. 1,00,000/- for B's plot of land and B accepts the offer, there is an agreement between A and B.

(e) Contract

According to some juristic writers of the nineteenth century, contract is an agreement between free and consent- ing minds. In this subjective sense, the concept is very near to the Roman idea of *'consensus ad idem'*, i.e., the meeting of two minds. There are obvious difficulties in accepting this definition because 'individual liberty' and 'freedom of contract'—the two essential notions necessary for consenting minds, are two ideal classical notions that have caused to have idealistic attraction in an acquisitive society of modern times. For example, a young boy of 13 or 14 years, Ram Kishan, ran away from his home at Baheri on the 9th of June 1993. The father offered a reqard of Rs. 500 to "anybody who traces the boy and brings him home". On July 19, Mr. Harbhajan was at Dharmshala of Bareilly Railway station. There he saw the boy, overheard part of the conversation of the boy and realised that he has ram Kishan. He promptly took the boy to the Railway Police station where he made a report and sent a telegram to the boy's father. Could Mr. Harbhajan be entitled to the reward ? In this example, it it immaterial to argue whether the extent of Mr. Harbhajan's liberty to trace the boy is of paramoutn consideration, or the extra effort to undertake the liability of finding out the boy. Rather objectivists try to define the term more positively by defining the contract as a 'promise enforceable by law'. This positive definition has also certain demerits of irreconcilability with questions of morality and ethics at times. Suppose, the father came to know that Mr. Marbhajan traced the boy but just before lie could take the boy to police station and sent the telegram, he withdrew the proposal for reward. Is this not an immoral or unethical act for him to do? In fact, at times some subjective considerations become essential on the issue of legality and illegality. For example, in the above situation, the question whether Mr. Harbhajan did fulfil all conditions of the offer for reward was the issue in consideration. For the time being let us take the advice of Anson, that certain legal concepts are 'defeasible'. These are capable of being 'withered or defeated in a number of diffeieni contingencies' but if no such contingency arises, the import 'remains intact'. (The Indian Indian Contract Act,18721872, has tried to define the temiin Sec. 2(h) in the same positive manner as 'an agreement enforceable by law is a contract'.

f) Void Agreements

An agreement which is not enforceable by law at all is an agreement void ab initio i.e., from the very beginning. This means that such agreements do not create any rights or obligations in favour of or against the agreementing parlies. The second mamage of a Hindu spouse, while the first marriage subsists, does not create any rights in favour of the second spouse, and hence there is no necessity of a decree of divorce. In other words, if a party to an agreement, agrees to do an act which he is forbidden by law to do. no contractual rights or obligations arise. Such an agreement cannot be the basis of any further agreement, because all those consequential or collateral agreements also become void ab initio. For example, A agrees to sell a property to B to which he has no title or right of possession. This agreement therefore cannot crcalejiny right in favour of B, nor an obligation against A. Now suppose, relying on the validity of this agreement B agrees lo sell the same property to C, that agreement is also void ab initio. In **Cunly v. Lindsay** [(1878) 3 App.C.459], The plaintiff received an order for handkerchiefs from Bfenkarn who gave his address as, 37 Woodstrect,

Cheapside. He signed his name to make it look like Blenkiron St. Co. a respectable firm known by reputation to the plaintiffs and cairying on their business at 123, Woodstreet. The plaintiff sent the goods to "Blcnkiron & Co, 37 Woodstreet," where Blenkiron took possession of them. He later sold them to the defendants. It was held that there was no contradict ween the plaintiffs and Blcnkarn, as the plaintiff had never intended to deal with him. So the property in flie handkerchiefs did not pass to Blenkarn, and, consequently, he could pass none to the defendant. So plaintiff was entitled to take the whole lot of handkerchiefs from the defendant, and the defendant's argument that they had puirchased the goods bonafide, for value consideration was not deemed a' valid defence.

(g) Void Contracts

A contract which is valid at the time of entering into it, but becomes void at the time of performing the contract due to change of circumstances is known as void contract. That is, if a contract is enforceable by law at the time of entering into it, but becomes unenforceable at the time of execution, such contract is known as void contract. A contract collateral to a void contract is not necessarily void. For example, suppose Suresh has landed property in Bombay. He received a notice of acquisition on 1-1-1994. He thought that in order to substantiate the market rate of the land or a reasonable value he could resort to an agreement of sale of the land. So he offered his land for sale to Dinesh for Rs.50 lakhs. Dinesh was unaware of the notice of acquisition. This agreement is void ab initio and no importance is to be given to the existence of agreement while computing the compensation. Whether Dinesh had paid any advance on thlfagfecnicnt need not also be considered. But suppose Suresh and Dinesh had entered into the agreement for sale - purchase of land before the issuance of notice of acquisition to Suresh. In such a case, consideration could be given while computing compensation about the existence of thai contract, which had become void on the service of the notice.We can take another example to this point. Manish, a minoir. sold a property to Dinesh who later on sold part of the property to Harish. Here both the sales are void because the agreement between Manish and Dinesh is void ab initio, and consequently the later agreement Between Dinesh and Harish is also void. But suppose, Manish is an adult person and he agrees to sell the property to Dinesh because Dinesh has threatened to kill his brother unless Manish agrees to sell the property. Now suppose the sale did take place, and thereafter Dinesh sold part it to Harish. After sometime Manish applied to the court and did prove that he had to agree because of the threats from Dinesh. The Court gives the decree of avoidance i.e., declares the contract between Manish & Dinesh void. Here Manish will not be able to get the part of the property sold to Harish, because the contract between Dinesh and Harish was valid and could not be terminated on grounds of avoidance of contract due to 'Coercion', unless of course Harish was also a party to that coercion or Harish had purchased the property with knowledge of the coercion.

(h) Voidable Contracts

A contract which is avoidable at the option of a party is known as voidable contract. In other words, a voidable contract is one where one party can go to the court on justifiable plea and can avoid the contract under the direction of the Court. Such a contract remains absolutely valid until the court gives the order of avoidance. As per sec. 19(a) & (b) of the Indian Contract Act, a contract is voidable by the party suffering from the conse- quences of coercion (S. 15), under influence (S. 16), fraud (S. 17) and misrepresentation (S. 18). Once the court gives the order, the contract becomes void.

(i) Illegal Agreement

An illegal agreement is one where, if the agreement is performed parties would violate the provisions of some law. For example, A offers to pay Rs. 1,00,000 to B if B murders C. This agreement is illegal. Such an agreement itself is an act of conspiracy. If B murders C, B will be prosecuted for murder and A on charge of murder or abetment of murder. **All illegal agreements are void, but all void agreements are not illegal**.

1.2 PROPOSAL MUST NOT BE CONFUSED WITH INVITATION TO TREAT

Proposal and invitation, information and intention to propose must be distinguished. The following examples would illustrate the same:

i. The Secret ary of a school advertised inviting applications for the post of headmaster. X, an applicant was interviewed for the post. The board of managers interviewed the candidates and selected X for the post. A manager in his individual capacity informed X about the selection. But X did not get any letter of appointment. The court held that there was no contract. The fact remains that there was no offer. Advertisement for the post was merely intention to. Offer. Application for the post was information. Interview as the preparatory step for the possible offer. The letter of appointment would only be the offer. (See Powell . Ue (1908) 99 L.Y. 284)

ii. A through telegram communicated to B, "will you sell us your Bangalore house ? Telegraph at what? price". B replied b}ktelegram, 'lowest price of the Bangalore house rupees nine lakhs'. A communicated back by telegram "accepted your offer of nine lakhs". It is not a contract because B's telegram of 'lowest price is simply **an information** and not a definite .. proposal. (See **Harvey v. Facey** ((1893) A C 552-
59) IE &E. 295, 309)

iii. A advertised in the newspapers that an auction shall take place at an address on a stipulated day and time. B reaches the spot but finds the auction withdrawn without notice. No action can be taken because it is an invitation to offer and not an offer. (See **Harris v. Nickerson** [(1873) L.R.8 Q.B. 286]

The three examples given above relating to intention, information and invitation to contract show the common law situation of 'invitation to treat' to be distinguished from the offer or proposal. In civil law system things are not very different. But in civil law system, for example in France, a group of lawyers (Notably, Baudry Lacantinerie et Barde, 1,30.) consider catalogues or trade circulars as conditional offers, i.e., offer open until the stock is exhausted. Goods displayed in the shop window or on a counter with a price attached are also legally analysed in the same way. According to them this is the natural way. Ofcoursc other section of the jurists as well as the courts seems to be inclined in interpreting in the common law way. They consider it only as an 'invitation to treat' without attaching any liability to the seller on the statements made. (See Planiol et Ripert, 6,n° 127,ni; Req. 29.4.1923 D 1904.1.136 etal.) Ofcourse, as against the later there is a very strong objection that this is 'to impute artificially the initiative to the wrong party [See Carbomier, 2 (100)].

In most of the commercial contracts parties go through a chain of events. In case everything goes well there is no problem. But once a problem arises the whole process of the contract requires a thorough scrutiny, in order to understand wherefrom the offer started and upto what situation is simply remains as an invitation to treat. It has already been stated earlier that the common law system (followed in India) and the civil law system of France and Germany have different ways

of approach. Whereas, in common law the identification is based upon the buyer and seller, and the buyer makes the offer unless it is clearly provided otherwise; in civil law the point of origin of the right of promise, is taken as the first point of origin of the contract i.e., the offer. Upto that point, the dialogue between the parties in exchanging information remains as an 'invitation to treat'. Often the offer itself crystallises after a long dialogue, containing several enquiries, information, identification of subject matter, offer of trade and cash discounts etc. Until the total offer crystallises, there is no question of any acceptance. It means that before the subject matter of the agreement is determined a lot of information passes between the parties, and only then, the buyer identifies the article he intends to buy. After a course of dialogue and exchanges thebuyer comes to understand the reasonable price that he can offer; And, finally, they talk of a lot of other issues like terms of sale, guarantees and warranties and the after sales service. It may appear to the onlooker that thereare innumerable number of offers and acceptances constituting the whole deal, but that is not so. In fact, when everything crystallises and the buyer is in a position to propose comprehensively, the 'offer* is said to be made. Upto that level, all that is thought to be various offers and acceptances are only in reality 'invitation, intention and information9necessary for making an offer. Due to this complexity in modern commercial contract, European law on contract started becoming codified according to the common law practice of the buyer being the offeror' unless otherwise intended by the parties.

PROPOSAL MUST BE COMMUNICATED:-

According to sec.3 of the Indian Contract Act, offer must be communicated to the offeree in the manner intended by the offeror. Uncommunicated offer is no offer and it cannot be accepted. In **Lalman Sukla v. Gouri Dutt**,[(1913) ALJ 489] the plaintiff was an employee of the defendant. He agreed to go to Haridwar to search for the missing nephew of the defendant and finally found the boy without knowing that the defendant had announced some reward for the work. The issue was 'could he demand the reward'! The court held that 'being under the obligation, which he had inclined before the reward in question was offered, he cannot claim the amount'. A person ignorant of the offer cannot be said to have accepted it only because he has done something which the offer has stipulated. Anson has rightly observed 'a person who does an act for which a reward has been offered in ignorance of the offer cannot say either that there was a consensus of wills between him and the offeror, or that his act was done in return for the promise offered. (Guest Ansons's Law of Contract 24 Edn, LPE, P-34).

Communication of offer is essential for its consequent acceptance. A pair of cross offers with same terms from opposite parties do not make an agreement unless one is made with reference to the other. For example, suppose X intends to purchase 800 tons of coal at Rs.700 per ton and writes to Y and Y at the same time writes to X for selling 800 tons at Rs.700 per ton. These are known as cross offers where one crosses the other at the transit.T h i s i s n o t a c o n tract. (Tim **v. Hoffman** LC (1873) 29 L.T. 271)

Terms of offer must also be communicated to bring out the terms and conditions within the offer. This is very important specially in the case of standard form agreements (Standard form agreement is one where conditions are standardised by the sale of goods and services in the form of information based on which terms the proposer has to submit his proposal). For example, a customer intending to get power connection has to submit his proposal or application for power connection on the basis of terms and conditions stipulated by the Board or in the offer where terms and conditions are written elsewhere. Suppose, the terms and conditions in a laundry are stated on

the backside of the 'bill'. The notice of the customer must be attracted to those conditions. In such a case it will be sufficient if the proposal gives a reasonable notice of the contractual terms. Suppose the front side of the document refers to 'vide reverse' or 'turn back' or 'conditions given overleaf, such a notice is enough to bring those conditions within the fold of the offer. But if no notice is given and the conditions are kept outside the promise, then the offer is not complete.

A proposal made through a telephone but not heard does not become a proposal or offer. A teleprinter or a fax not bringing the total proposal does not constitute any offer or proposal. According to sec. 4 of the liuli.in Contract Act, the communication of proposal is complete only when it comes to the knowledge of the person to whom it is made.

COUNTER-OFFER

If the offer is not accepted in its original terms and conditions and is accepted with different terms or new terms stipulated, the original offer is rejected and it stands terminated. Afterwards the same cannot be activated. The acceptance with new terms or suggestion of new terms becomes a counter-offer. For example, A offers to sell a farm to B for Rs. 10,00,000. B wants to pay Rs.9,50,000. This is a counter-Offer. Suppose A refuses it B afterwards wanting to pay Rs. 10,00,000 would not be able to accept A's earlier proposal because that proposal has been terminated or cancelled with the counteroffer. B's offer is to be termed as a new proposal, i.e., a counter-offer. Sometimes in a business contract it becomes very difficult to identify the proposal in its entire form with conditionalities, because the proposal crystallises over a bilateral dialogue. If the dialogue is through conespondence or is made orally, the whole of it must be viewed in its entirety according to the intention of the parties in order to determine the proposal in its entire form.

PROPOSAL TO BE MADE TO A PERSON

Proposal or offer must be made to another person. In one sense it means that offer must not be made to self. For example, a stock broker's offer for buying and selling the same share benami, shall not constitute a proposal at all. The second meaning is that offer requires two persons, one to make it and another to whom it is made. A proposal made by the Managing Director of a limited company for and on behalf of that company to the Managing Director but acting in his private capacity, is a good proposal. Here the proposer is the limited company since it is a legal person. The other person is the MD, acting in his private capacity. But it is not necessary that offer has to be made to a definite person. Offer not made to anyone in particular i.e., one which may be accepted by anyone, is a general offer. When offer is made to a specific person it is a specific offer. For example, if a reward is declared to anyone who finds the lost dog, it is a general offer, but X*s offer to purchase Y's law books for Rs.50,000/- is a specific offer. The third meaning is that a 'person' to make an offer and to receive it must be either a person-in-fact or a person-in-law'. The corporate bodies are person-in-law and can make or receive offer, ofcourse, within the scope of its terms of incorporation. These principles are same or similar in all other legal systems.

WITHDRAWAL OR REVOCATION OF PROPOSAL

Offer or proposal may be withdrawn at any time before it is accepted. This is the general principle of revocation of offer in common law as well as in civil law. In India the codified law is more detailed, because the law relating to acceptance was not the same earlier in India as it was in the common law or in the civil law system. According to sec.5 of the Indian Contract Act, proposal can be revoked at anytime before the communication of acceptance is complete as against the proposer but not afterwards. Suppose X proposes to buy B's motor car for rupees one lakh on 1.1.92. The letter reaches

X on 5.1.92. The offer is made on 5.1.92. Now suppose B agreed to sell the car and sends the letter on 8.1.92. The communication of acceptance is complete against X on 8.1.92. So if X wants to withdraw or revoke the offer, he has to do it before 8.1.92.

Suppose X agrees to be the guarantor if Y discount bills with State Bank of India for a period of twelve months. This is known as a standing offer for twelve months against acts of discounting bills. On every bill being discounted, the offer or proposal turns into a promise. Suppose after three months X revokes his guarantee giving notice, he shall not be liable for further discounting of bills. (Sec **Offord v. Davies** (1862) 12 N.S. 748. A Statutory law, or a law passed by the legislative system of a country and promulgated on the people is known as a codified law. So Indian Contract Act, 1872 is a codified law).

In unilateral contracts (Unilateral contract is a promise for an act e.g. reward for an act) the revocation of the proposal becomes sometimes a complicated issue. Suppose X proposes a reward of Rs. 1000 if anyone brings back his lost dog. Here if X is allowed to withdraw his offer before the finder of the lost dog brings it to him, there may be a miscarriage of justice. Suppose X comes to know that B has found his lost dog and is about to come with it and X withdraws his offer. This will be against fairness and natural justice. In order to prevent such miscarriage of justice Lord Denning held that when the other party stalled to execute the act, the acceptance is complete and hence it cannot be withdrawn thereafter. In Errington v.Errington.[(I952) 1 KB 290] a father promised that if his son and daughter-in-law paid up the mortgage amount on the property, the property would be theirs. They started paying off the mortgage amount in instalments. Lord Denning held that the promise could not be withdrawn thereafter though the execution of the promise could be done only when the payment is made. Some authors argue that acceptance must be distinguished from performance of the act. To the parties who have already commenced execution, the proposer is obligated to keep the offer open for a reasonable time. But there are contradictory decisions on this issue. For example, The House of Lords in **Morrison Steamship Co. Ltd v. The Crown** ((1924) 20 U.L.R. 283) held that commencement of execution of an act does not convert offer into a promise. It may only entitle the party for an action for damages on 'quantum merit'.

According to sec.6 of the Indian Contract Act, revocation may be (a) by way of notice; (b) by lapse of time; (c) by failure of the acceptor to fulfil condition precedent to acceptance; and (d) by incapacity or death of the acceptor.

Distinction must be made between lapse of an offer and revocation though effect is same, revocation is by the deliberate action of the proposer. He withdraws it by notice. But a proposal is 'dampened' due to lapse of time. A proposal standing for a specific time limit, becomes automatically withdrawn at the end of the time unless it is renewed. Infact, such a withdrawal does not require a notice to be sewed. If it is to be renewed, then only a notice is to be served again. Similarly, if the acceptor is unable to fulfil prior condition, the proposal is automatically withdrawn. A proposes to pay B Rs.5()0 if B marries C. B marries D. The proposal is automatically withdrawn.

Death or incapacity automatically revokes the proposal, if the other party comes to know of it before acceptance. In civil law, such as French law, death or insanity of the proposer automatically terminates the proposal provided it happens before acceptance. Knowledge of the acceptor is immaterial. (Req. 21.4.1891 D.1892.1.181) It seems that French law in this regard is more logical than the common law on which statutory law in India is framed. Similarly, a proposal open for a

definite period, according to French law cannot be retracted but in common law, so also in Indian law, proposal for definite or indefinite period can be revoked with notice.

ACCEPTANCE

A proposal becomes a promise only when it is accepted by the other party to whom the proposal is made. For example, a traveller intending to go to a place by train tenders the fare at the railway counter. This is a proposal made to the railways for going to a place by train. When the ticket is issued to the proposer, it is said to be accepted. Once accepted the proposal becomes a promise. Acceptance can be formal through written documents. For example, suppose A writes to B, offering to purchase B's plot of land for Rs. 50,000. B writes back accepting the proposal. This is a forma! acceptance. But acceptance may also be made orally or by conduct. Suppose A advertised in the newspaper announcing that anyone who contracts influenza within a fortnight of taking the 'antiflu' tablet made by the proposer would be given a thousand rupees. If B takes the tablets after seeing the advertisement and gets the flu within a fortnight, B would be entitled to the money because B's taking, of the antiflu tablet is his acceptance of the proposal. (See **Carlill v. Carbolic Smoke Ball Co**). Similarly, if B gets into a plying route-bus, he is bound to pay the fare since he has accepted by his conduct to travel in the bus. (See **Derry v. Peak**) Thus acceptance may be in the form of (a) an act ; or (b) a promise. If A proposes to give his daughter in marriage to B and B accepts, B is actually promising to many A's daughter on the stipulated date and time.

According to scc.2 (b) of the Indian Contract Act, "when the person to whom the proposal is made signifies his assent thereto" the proposal is said to be accepted. As such, a proposal to be accepted requires (a) assent of the promise; and (b) of the actual proposal in its entire form.

ACCEPTANCE MUST BE IN TOTO

A offers B his 'horse in harness for £ 3()e. B accepts it 'in double harness'. **(Jordon v. Norton)** This is no acceptance. This is only a counter- offer. Acceptance in order to convert a proposal into a promise must be 'absolute and unqualified'.(**U.P. State Electricity Board v. Goel Electric Stores,** AIR 1977 All 494) Any alteration of terms or changing of conditions of the proposal by the acceptor while accepting will make the acceptance a counter-offer. Counter-offer is the new offer which now the original proposer is to consider for acceptance. Suppose A proposes to purchase B's house for Rs.60,000 and B says he may consider a proposal not below Rs. 1,00,000. B's statement is not a counter-proposal. B's statement amounts to (1) rejection of A's proposal out right and (2) information to A that B is likely to consider any proposal unless it is Rs. 1,00,00 or more.

So far as **manner** of 'acceptance is concerned the acceptor is to accept the proposal "in some usual and reasonable manner". But if the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner not otherwise, but if he fails to do so, he is deemed to have accepted the acceptance. For example, A writes to B offering to purchase B's house for rupees nine lakhs and requires acceptance by post. Suppose B meets him and communicates his acceptance orally. A may insist that B write his acceptance. If he does not insist, it will be presumed that A has accepted his acceptance.

WHEN IS ACCEPTANCE MADE?

Unless the proposer dispenses with communication of acceptance, for example by proposing that 'find out my lost dog' I will pay you rupees two hundred, acceptance is made when it is communicated. According to sec.4 of Indian Contract Act, acceptance is complete.

(a) as against the proposer when it is put into the course of transmission so as to be out of the power of acceptor, and, (b) as against the acceptor when the proposer receives the acceptance. For example, A accepts by a letter or by a telegram, B's proposal of offering Rs. 6 lakhs for A's house, as per A's instruction. As soon as the letter is posted or the telegram is despatched, the communication of acceptance is complete against the proposer and the acceptance is complete as against the acceptor as soon as the letter or the telegram reaches B. In England acceptance is complete against both acceptor and the proposer as soon as the acceptance is put into the course of transmission. That is, acceptance once made cannot he taken back because it is complete and binding against both the parties as soon as it is put in the course of transmission. According to the principles of law in England, the course of transmission is stipulated by the proposer and therefore, the course of transmission becomes agent of the proposer. Suppose if the proposer stipulates either post or, telegram or telephone or Fax, as (he course of transmission, the communication media becomes the instrumentality of the proposer, or in other words the agent of the proposer. As such, a letter posted with proper stamp and correct address, or telephone made or a telegram sent or a letter sent by fax must be taken as complete against both the parties. But a cut-off communication or a dead letter box or a disconnected fax system or a dead telephone line cannot set the acceptance in the course of transmission. Such as, a proposal orally made and accepted orally with a disturbed sound on account of an overflying aeroplane and not being heard by the proposer is not a communication, as Lord Denning tries to explain. If a modern course of communication is inoperative, one cannot say that the acceptance is complete when the acceptor puts the acceptance in the inoperative system. But if the fax machine is operative and the message is received, the proposer cannot take a defence by saying that "there was no staff in the office to send the message to the defendants". On the contrary, if the fax machine does not receive the message or suddenly stops taking the message in full without communicating the exact position, the acceptance is not made at all.

SILENCE IS NO ACCEPTANCE

Silence is no indicator in a positive legal system such as ours. Justice Macnaughtcn once observed that human mind is a trait, even the devil does not know what is in the mind, what to talk about a poor judge ! Positive law requires clear positive indication of acceptance. So long the matter is confined to the 'self' of the acceptor, it is not regarded as acceptance. Besides, no one can compel another to consider his/her proposal and therefore to speak. Suppose X makes a proposal to Y. X cannot compel Y to consider the proposal and to speak on it. Y has the right to completely disregard it and maintain his silence. So silence cannot be presumed as a mode of acceptance because if it is allowed, a person is compelled to speak. Suppose X proposes to Y and suggests 'if you remain silent' 1 will take it as acceptance. It means how Y has to say 'no' if she does not intend to marry X and as such cannot ignore X's proposal. This is unreasonable and an infrigment on the 'right' of a person.

But that docs not mean that 'conduct' cannot be prescribed as a means of acceptance. Suppose a pharmaceutical company advertises 'reward' to anyone contracting influenPa within a fortnight of using the anti-flu tablet manufactured and sold by the firm, the firm has to give the

amount to anyone who purchases the pill, uses it and has an attack of'flu' within the time. This is not a mental acceptance only because communication of acceptance is not made i.e., 'swallowing the pill' was not informed to the company. 'Acceptance' may not be communicated if the proposer dispenses with the communication. If 'swallowing the pill' is enough prescription, no further communication is needed. If one follows the instructions printed in the prescription of the company, as in the instant case, that would constitute 'acceptance' and no communication to the company is necessary. Acceptance may be made cither by a 'Promise' to act in future or immediately. The nature and manner of acceptance is determined by the proposer. In a case where a proposal was made to supply coal at a price to a railway company and the manager of the railway company wrote the letter of acceptance but kept the same in his drawer, it was held there was no communication of acceptance and hence no contract. (**Brogdan v. Metropolitan Railway Company**). It was almost similar to a mental acceptance and not allowed in a positive legal structure. Ofcourse under old Hindu law in India 'silence used to be treated as acceptance'. However under our present contract laws, this principle does not find a place.

ACCEPTANCE BY CONDUCT

Acceptance can be validly made by conduct if'conduct' is prescribed by the proposer to accept an offer. As for example, any proposal to reward against an act by the offeree can only be accepted if the offeree does that act. Suppose a pharmaceutical company gives an advertisement for paying Rs. 10,000 to any person who takes the 'anti-flu' tablet for 7 days continuously and yet contacted with flu within a month after taking the tablets. Now suppose Mrs. X purchased the tablets and consumed those tablets for 7 days and then suffered an attack of flu within 15 days, can she demand Rs. 10,000 from the company? Can the company refuse payment because Mrs.X did not inform them about her taking the tablets and thereby accepting their offer? Can the company take a plea that it was only inviting offers for taking the tablets manufactured by the company?

Here the advertisement of the Company cannot be treated as 'information to treat'. In an 'information to treat' a response is needed for making a proposal. Here no such reaction is needed. As such, it is a proposal by itself. The proposal stipulated the action of "taking the anti-ilu tablet for 7 days and contacting flu within one month". It did not prescribe that the proposer had to communicate acceptance before taking the tablet. Hence fulfilment of the prescription by the company is quite a valid acceptance. It is acceptance by conduct.

REVOCATION OF ACCEPTANCE

In English common law acceptance once made cannot be revoked. But as suggested earlier in English law over the years two rules of communication transpired. One for oral communication of'offer' and 'acceptance' in which the communication of acceptance to the offer is emphasised, i.e., acceptance is made only when acceptance is communicated to the offeror. The other for the acceptance in writing and sending it by post where communication is complete as soon as it is put into the course of transmission. Here in the second case, whether the offeror really got the communication of acceptance or not cannot be the issue at all. In both the cases, common law is based upon the premise that acceptance once made cannot be revoked or withdrawn. According to Anson, acceptance is like a lighted match-stick to a train of gun-powder. Once the lighted match-stick is thrown, there is no escape from explosion.

A lighted match-stick cannot operate explosion unless the gun powder is dampened by operation of time or by counler-offcr. It can also not operate if the gun-powder is removed i.e., the offer is revoked before the acceptance. Otherwise, acceptance once made, makes the proposal a contract which is a complete fusion between a proposal and acceptance.

In India, the law is different. Mere acceptance can be withdrawn at anytime (sec. 4 and 5 of ICA) before the acceptance is complete as against the acceptor i.e., before the acceptance is actually communicated to the proposer. Suppose A accepted through a letter a proposal from B. As soon as A puts the letter of acceptance in the post box, it is binding on B and he cannot thereafter withdraw his proposal. But as far as A is concerned it is still not binding because as against A the acceptance is complete only when the letter reaches B. If A sends another letter through speed post and that letter reaches B earlier than the letter of acceptance, the second letter withdrawing the acceptance is valid and binding. According to sec.5 letter of revocation is complete against the revoker as soon as it is posted and against the other party when it reaches. So, A's withdrawal letter is required to be posted before his letter of acceptance reaches B.

The reason for giving an opportunity of revoking the acceptance is pohaps an equitable one. While the proposer has a reconsideration time between his proposing the issue and acceptor's putting in his acceptance, acceptor is given a breathing and rethinking time between putting in a letter of acceptance and its reaching the proposer. This is perhaps, a demand of equality of opportunity.

In India therefore there can be a situation where the acceptance is complete against the proposer, because the communication of acceptance is put in the course of transmission, but the acceptance is not complete against the acceptor himself even though he puts the acceptance letter into the communication line. Apparently it looks illogical, because, the proposer is bound by the contract though he docs not know when was the communication put into the course of transmission and he is not in receipt of the same. He cannot take the plea that since he has not received the communication of acceptance, he is not bound by it. Lord Justice Macnaughten explained this apparent contradiction. According to him, while making the offer usually the offeror stipulates the media of communication. So if the acceptor has correctly and in time puts the acceptance in transmission as per the offeror's directions, has he not done everything what he is required to do? So on account of any fault in the media of transmission if either party has to suffer it is illogical that the proposer should suffer instead of the acceptor. Ofcourse Justice Macnaughten did not take into account mechanical faults of the communication media in his principles of communication but by and large his logic is sound. According to some authors, this rule of communication of acceptance is full of dichotomy, because, even with knowledge that the acceptance has been made the acceptor himself is not bound by the contract until the letter reaches the proposer. In defence of the statutory provision it can be said that the Statute wanted to extend similar opportunity of revocation to both the offeror and acceptor; because, the offeror can revoke his offer until the acceptance is put in course of transmission. Hence the opportunity to 'rethink' is also given to the acceptor also, and, he can withdraw the acceptance before the acceptance is received by the proposer.

Those who argue for the dichotomy, offer and acceptance according to them are made in two places, which makes the problem of jurisdiction of the court very complicated. This is explained in the next issue.

WHERE IS THE CONTRACT MADE?

The question 'where is the contract made', is a very important issue because (a) it determines the time of fonning the contract; (b) it stipulates the jurisdiction of the court; and (c) it affixes the rights and obligations of the parties. A contract is made as soon as it is accepted. Under the common law system, as per the postal rules acceptance is complete as soon as acceptance letter is put into the course of transmission. So if the 'acceptance letter' is put into the course of transmission in lRai-Bareilly', acceptance is complete thereat'Rai- Bareiliy', and the District court there will have jurisdiction. In England once the letter of acceptance is put in the course of transmission, the acceptance is complete against both the parties and the contract is immediately formed. Sir William Anson gave a siinili for acceptance in the 'lighted match-stick' to a 'train of gun-powder' example. In this logic the media of communication acts as tlic agent of the proposer. In India we do not follow the same rule in totality. Acceptance is complete, as already stated, against proposer, when the letter is posted. Hence, in so far as formation of the contract is concerned, the time and place of posting the acceptance letter in transmission is decisive, the acceptor also gets an equitable opportunity to withdraw his acceptance till the letter reaches the proposer. The media of communication is treated independent and not as an agent of the proposer. The postal rule is clear and easily applicable in cases where conventional communication method is followed. But in case of modem communications the difficulty arises. For example, if acceptance letter is posted at Bangalore, acceptance is complete in Bangalore and Bangalore city court shall have the jurisdiction. But suppose it is faxed from Bangalore to Delhi. Where is the contract made? Lord Denning explained the situation in **Entores Ltd v. Miles Far East Corporation** [(1955) 2 ALL ER]. According to him "there is no clear rule about contracts made by telephone or by telex. Communication by these means arc virtually instantaneous and stand on a different footing". Lord Denning, therefore, rejected the postal rule and decided that 'it is not until the message is received that the contract is made'. In essence original offer was faxed by the defendant firm. Miles Fax East Corporation of Amsterdam, against which, the London firm being the plaintiff made a counter offer. As such the court decided that since the acceptance through fax was received in London, the London court has the jurisdiction in deciding the case. Thus according to this decision, in all cases where telephone, telex or fax is used, the place of receipt of the message is construed as the place of contract.

This rule is against the postal rule and Indian law regarding communication. According to this age-old principle, as soon as the acceptance is put into the course of transmission at its place, acceptance is complete (in case of India, of course against the proposer). So the place of dispatching fax or telex or telegram should be the place determining the jurisdiction, not the place of receipt of the message. As such decision in **Entores** is just the reversal of the common law principle, "acceptance is effective when and where it enters the channel of communication". Justice Shaw also noticed that the views of state courts in the US which enforced this old Common law principle. According to the state courts in the US "by the technical law of contracts the contract is made in the district where the acceptance is spoken" (See **Traders & Co. v. Arnold Gin Co.** Tax Civ App 225 SW. 29 1011). Justice Hidayatullah had very rightly doubted thejusticiability of the 'ratio' in **Entores** and held that the language of sec. 4 of the Indian Indian Contract Act,1872could cover the case of communication over the telephone, as well.(**Bhagwandas Goverdhandas Kedia v. Girdharilal Puishottamdas & Co. & others**, AIR 1966 SC 543).

PROPOSAL AND ACCEPTANCE IN THREE FORMS

Proposal and acceptance can take shape in three ways, viP, promise fora promise or bilateral promise ; promise for an action or unilateral promise ; and action for an action or bilateral action. A bus plying on a route and an intending traveller makes a contract by bilateral action i.e., plying of the bus is the proposal and getting into it is the acceptance. A promise of a reward for an act is a unilateral promise, e.g., a promise of a reward for finding a lost child is a unilateral promise. A promise to buy a land is a bilateral promise because there are two promises one proposes to buy the land and the other accepts it. Contract may be executory or executed. For example, a promise to pay-railway fare for a travel takes the form of a contract only when the promise to pay the fare is executed. This is an executory contract, but a land deal remains an executoiy promise for long because execution of the contract takes place after a long time. This is an executoiy contract. A unilateral promise is binding only when the other party has acted according to the demand of the promise.

TYPES OF AGREEMENT

A proposal accepted becomes an agreement. Such agreements may be either expressed by words spoken or written or it may be implied i.e., not spoken or written in words. For example X sits in Y's shop and sells goods in the presence of Y. There is deemed to be a contractual relation between X and Y authorising X to sell goods, (sec 9) An agreement may be reciprocal in nature. Bilateral promises are reciprocal promises. For example, a contract between A and B that A will deliver goods and B will pay on delivery of the goods. This is a reciprocal promise (sec 8 & 51). An agreement may be a joint promise by two or more promisors or by two or more promisees. In an agreement there can be an alternate promise, as well. For example, A promises his home X or Y to B for Rs. 51,00,000. This is an alternate promise. Agreements may be contingent depending upon a future uncertain event or conditional, based on conditions, expressed or implied.

All contracts are agreements, but all the agreements are not contract:-

Yes, all contracts are agreements, but not all agreements are contracts because agreements may not meet the requirements to be legally binding. The main difference between an agreement and a contract is that a contract is legally enforceable, while an agreement is not.

To be a valid contract, an agreement must meet several essential elements, including:

- Offer and Acceptance:-

  An agreement between two parties. An agreement is the result of a proposal or offer and its acceptance by the other. Lawful consideration
- Capacity of the parties: - Three should be an agreement between two competent parties.
- Consent of the parties: - Three should be free consent between the parties, i.e., the consent must not be affected by coercion, undue influence, fraud or misrepresentation.
- Lawful object and lawful consideration: - The agreement should cover lawful object and lawful consideration.
- Must not be expressly declared to be void:- The agreement Must not be one which is expressly declared to be void.

If any of these elements are missing, the agreement will not be enforceable as a contract. Agreements that are not enforceable by law are called void agreements. In a void agreement, neither party can claim compensation or damages.

Difference between Agreement and Contract: –

AGREEMENT	**CONTRACT**
When a proposal is accepted by the person to whom it is made, with requisite consideration, it is an agreement.	When an agreement is enforceable by law, it becomes a contract.
Offer and Acceptance	Agreement and Enforceability
Section 2 (e)	Section 2 (h)
Not necessarily	Normally written and registered
Does not creates legal obligation	Creates legal obligation
Every agreement need not be a contract.	All contracts are agreement
Wide	Narrow

Essential elements of a valid contract: –

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

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

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

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

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

6) **Competent (capacity) to contract – Section 11**

a) The parties to the contract shall be competent to contract

b) For a person to become competent to contract –

- Such person should be major (18+)
- Such person should be of sound mind (Section 12)
- Such person should not be disqualified by law

7) **Free consent –**

a) There shall be free consent between the parties to the contract

b) Consent is said to be free when the following elements are absent (Section 14)

- Coercion (Section 15)
- Undue influence (Section 16)
- Fraud (Section 17)
- Misrepresentation (Section 18)
- Mistake (Section 20, 21, 22)

8) **Intention to create legal relationships –**

The intention of the parties to a contract must be to create a legal relationship between them. Example: A husband promising his wife to buy her a 'necklace' on occasion of her birthday is not a contract.

9) **Possibility of performance –**

The agreement should be capable of being performed

Example - if A promises B to bring rainfall through magic. Such agreement cannot be enforced

10) **Legal formalities –**

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

Definition of Proposal or Offer:-

A) Definition – Section 2(a)

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal

B) Types of offer –

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

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

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

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

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

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

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

C) Essentials of valid offer –

1) Offer may be expressed or implied –

An offer may be expressed or may be implied from the conduct of the parties or circumstances of the case.

2) Offer may be specific or general –

a) A specific offer is one which is made to a particular person. It can be accepted by the person to whom it has been made, no one else can accept such an offer.

b) A general offer is an offer made to the public at large.

3) Offer must create Legal Relations –

An offer to be valid must create legal relationship between the parties. Say for example a dinner invitation extended by A to B is not a valid offer.

4) Offer must be Clear, not Vague –

The terms of an offer should not be vague (not clear / confusing)

For e.g., A offers to sell B fruits worth Rs. 10000/-. This is not a valid offer since what kinds of fruits or their specific quantities are not mentioned.

5) Offer must be Communicated to the Offeree –

An offeree cannot accept the proposal without knowledge of the offer **(*Lalman Shukla v. Gauri Dutt*.)**

6) A statement of price is not an offer

7) **Offer cannot contain a Negative Condition –**

The non-compliance of any terms of the offer cannot lead to automatic acceptance of the offer Example*:* A offers to sell his cow to B for 5000/-. If the offer is not rejected by Monday it will be considered as accepted. This is not a valid offer.

8) **A mere statement of intention is not an offer**. Thus, a person who attended the advertised place of auction could not sue for breach of contract if the auction was cancelled

9) **Offer must be distinguished from an invitation to offer –**

OFFER	**INVITATION TO OFFER**
When one person expresses his will to another person to do or not to do something, to take his approval, is known as an offer.	When a person expresses something to another person, to invite him to make an offer, it is known as invitation to offer.
Section 2(a) of the Indian Contract Act, 1872.	Not Defined
To enter into contract.	To receive offers from people and negotiate the terms on which the contract will be created.
Yes	No
The Offer becomes an agreement when accepted.	An Invitation to offer, becomes an offer when responded by the party to whom it is made.

A) Essentials of valid consideration –

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

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

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

Example:

- If X rushes to Y's help whose house is on fire, there is no consideration but a voluntary act. But if X goes to Y's help at Y's request, there is good consideration as Y's did not wish to do the act gratuitously (without consideration)
- P agrees to sell his horse to Q for ` 50,000. Here consideration for P for selling horse to Q

is consideration of ` 50,000 from Q and consideration for Q paying ` 50,000 to P, is P selling his horse. Here considerations had come at the desire of Promisor. P is a promisor for Q and similarly Q is a promisor for P.

2) Consideration may move from the promisee or any other person:

a) Consideration may be furnished even by a stranger under Indian Law.

b) Consideration can be from any direction, even a stranger to contract can offer consideration. **Case law: Chinnayya v/s Ramayya**

3) Consideration must be something of value –

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

4) It may be an act, abstinence or a return promise –

a) Promise to not to smoke is a negative act (abstinence),

b) Promise to not to refer the matter to court (abstinence).

c) Promise to perform at the wedding anniversary or birthday party (promise to do).

5) It may be past, present or future which the promisor is already not bound to do :–

a) According to Indian Law Consideration may be past, present or future.

b) But under English Law Consideration may be present or future. Past consideration is no consideration according to English Law

6) It must not be unlawful :–

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

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

NO CONSIDERATION – NO CONTRACT- Section 25 of Indian Contract Act,1872

A) Meaning –

The general rule is ex-nudopacto non oritur actio i.e. an agreement made without consideration is void.

Example –

If a contract is in writing and registered.

1) Promise made on account of natural love and affection –

An agreement made without consideration is valid –

a) It is expressed in **writing**.

b) It is **registered** under the law.

c) It is made on account of **natural love and affection**.

d) It is between parties standing in **near relation** to each other.

2) Promise to compensate for voluntary services –

Voluntary service means service done without any request. It will be valid if the following conditions are satisfied –

a) The service should have been done voluntarily.

b) The service should have been done for the promisor.

c) The promisor must have been in existence at the time when the service was done.

d) The intention of promisor must have been to compensate the promisee.

e) The service rendered must also be legal.

Example: Jethalal finds Babita's purse and gives it to 'her. Babita promises to give Jethalal 50 rupees. This is a valid contract.

3) Promise to pay time-barred debt –

a) A promise by a debtor to pay a time-barred debt is also a valid contract.

b) But the promise must be in writing.

c) It must be signed by the promisor or his authorised agent.

d) The promise may be to pay the whole or part of the debt.

Example: Ram owes Laxman 1,000 rupees but the debt is barred by the Limitation Act. Ram signs a written promise to pay 500 rupees on account of the debt. The promise will be valid and binding without any fresh consideration.

4) Creation of Agency –

a) No consideration is necessary to create an agency.

b) Thus, when a person is appointed as an agent, his appointment is valid even if there is no consideration.

5) Completed Gifts –

a) Gifts once made cannot be recovered on the ground of absence of consideration.

b) Absence of consideration will not affect the validity of any gift already made. Example: X gave a watch as a gift to Y on his birthday. Later on X cannot demand the watch back on the ground that there was no consideration.

6) Contract of guarantee –

Contract of guarantee needs no consideration.

7) Remission –

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

Doctrine of Privity of Contract / Stranger to Contract:-

Doctrine of privity of contract means stranger to contract cannot sue

Dunlop Pneumatic Tyre Co. v. Selfridge Ltd –

D supplied tyres to a wholesaler X, on condition that any retailer to whom X re-supplied the tyres should promise X, not to sell them to the public below Ds list price. X supplied tyres to S upon this condition, but nevertheless S sold the tyres below the list price. Held: There was a contract between D and X and a contract between X and S. Therefore, D could not obtain damages from S, as D had not given any consideration for Ss promise to X nor was he party to the contract between D and X.

Exceptions –

In the following cases, stranger to a contract can also sue

1. **Beneficiary of a trust –**

A trust is created for the benefit of a beneficiary. Hence, the beneficiary can enforce the provisions of the trust even though he is a stranger to the contract.

2. **Provision in marriage settlement –**

A stranger to the contract can sue on the contract where a provision is made for him in marriage settlement.

3. **Provision for maintenance or marriage expenses of female members under a family arrangement**

In case a provision is made for the marriage or maintenance of a female member of the family on the partition of a Hindu undivided family, the female member can enforce the promise though she may be a stranger to a contract.

4. **Assignee of a contract –**

a) The benefits of a contract may be assigned.

b) The assignee of a contract can enforce the benefits of a contract though he is not a party to it.

5. **Acknowledgement of liability –**

Where the promisor either by his conduct or acknowledgement or by part payment or by estoppel creates privity of contract between himself and the stranger, the stranger can sue.

Example: X pays Y 500 rupees to be given to P, Y acknowledges to P that he holds that amount for him. P can recover the amount from Y.

6. **Agency contract –**

Contracts which are entered into by the agent on behalf of the principal can be enforced by the principal even though he is not a party to the contract.

Free consent:-

A) Meaning – Section 13

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

B) When consent is said to be free?

2. Capacity to contract and Free Consent:-

2.1 Capacity to contract:-

Section 11. Who are competent to contract.—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.

Section 12. What is a sound mind for the purposes of contracting. — 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. A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

Minor under Indian Contract Act, 1872

In India, individuals below the age of 18 are considered minors under the law. Even a person who is 17 years and 364 days old would be regarded as a minor. The age of majority, defining when a person becomes an adult, is determined by the Indian Majority Act of 1875.

According to the Indian Contract Act 1872, minors are deemed legally incompetent to enter into any form of contract. This means that contracts involving minors are considered void and unenforceable. The law recognises the need to protect the interests and well-being of minors by limiting their contractual capacity until they reach the age of majority.

Nature of Minor's Agreement:-

An agreement entered into by a minor is considered void and has no legal effect. As a result, it lacks any enforceable contractual obligations on both parties. Since a contract with a minor is deemed invalid from the beginning, it is essentially non-existent in the eyes of the law.

Therefore, neither party is legally bound by any contractual obligations or duties arising from such an agreement. The concept of a void minor's agreement ensures that the legal framework recognises the minor's limited capacity to enter into binding contracts, providing protection and

safeguarding their rights and interests.

An Agreement with or by Minor is Void

Section 10 of the Indian Contract Act,1872 states that a contract involving a minor is considered void. Similarly, Section 11 clarifies that a minor lacks the competence required for entering into a contract. Prior to 1903, Indian courts had differing opinions on whether a contract with a minor was void or voidable. However, the Mohri Bibi v. Dharmo Das Ghose (1903) case settled this matter definitively.

MOHORI BIBEE vs. DHARMODAS GHOSE ILR (1903) 30 CAL 539 (PC)

The Section 2(h) of the Indian Contract Act, 1872 defines contract as an agreement enforceable by law. The contracts cannot be entered into by any person; the competency regarding the same has been laid down under Section 11 of the Act. The Section 11 of the Indian Contract Act, 1872 states that the person of age of majority, sound mind and not disqualified by law are competent to contract. The age of majority has been determined by the Indian Majority Act, 1875; according to the Section 3 of the said Act the person who completed the age of 18 is major.

The Contract Act lays down the law regarding competency but nowhere states about the effect of the contract if entered by the minor person. This conundrum has been settled by the following landmark case.

Fact of the case:-

In the present case, Dharmodas Ghose while he was minor entered into an agreement with Brahmodutt who was moneylender to secure a loan of Rs 20,000. At the time of the transaction the attorney, who acted on behalf of the moneylender, had the knowledge that the Dharmodas is a minor. Later, minor brought an action against the defendant stating that he was a minor when the mortgage was executed by him and, therefore, the mortgage was void and inoperative and the same should be cancelled.

In this case, appeal was filed by Brahmodutt's executors and they contended that minor represented his age fraudulently therefore law of estoppel should apply and also if the instrument is cancelled as pleaded by the Dharmodas then he should be made to pay the loan according to Section 64 and 65 of Contract Act.

ISSUES: -

1) Whether the deed was void under section 2, 10 and 11 of the Indian Contract Act, 1872 or not?
2) Whether the defendant was liable to return the amount of loan which he had received by him under such deed or mortgage or not?

3) Whether the mortgage commenced by the defendant was voidable or not?

JUDGMENT: -

After considering the facts of the case, Privy Council held that the agreement entered into with minor is void ab initio i.e. void from the very beginning. The court further held regarding the contentions of the defendant that, firstly law of estoppel will not apply since the attorney of Brahmodutt had knowledge of fact of minority of Dharmodas. Secondly, Section 64 and 65 of Indian Contract will not apply as there wasn't an agreement at the first place and for the

application of Section 64 and 65 the contract must be between competent parties.

Therefore, a precedent of minor's agreement are void ab initio had been laid down in the present case.

ANALYSIS: -

In this case, various principles of law had been analysed and laid down as follows:

a) Law of Estoppel: -

The Law of estoppel means if any person incurs liability on another person's representation then such person will not be allowed to change his position.

In the present case, the law of estoppel was not applied because the attorney of an appellant had knowledge about the fact of a minority of minor. However, in various other cases it has been held that the Law of Estoppel will not apply against the minor, despite the fact that the minor made an intentional misrepresentation, he will still be allowed to plead minority as a defence to evade liability. The reason behind such proposition is that the law made minor incompetent to contract because the person of such age should not be made liable to incur liabilities and applying the law of estoppel will defeat the purpose of S.11 of the Contract Act which makes the minor incompetent. Therefore, the law of estoppel will not apply against the minor as by such application he will be made to incur liability.

b) Section 64 and 65 of Indian Contract Act, 1872:-

The Section 64 and Section 65 of the Indian Contract Act, relates to the restoration of benefit received under voidable and void contracts respectively. The court observed that Section 64 and 65 applies to the contract between competent wherein it has been declared as void or voidable. However, in the present case the parties to the contract were not competent and therefore the provisions of restoration of benefit under Contract Act won't be applicable in the present case.

c) Refund under Specific Relief Act, 1877:-

The Section 41 of Specific Relief Act, 1877 i.e. current Section 33 Specific Relief Act, 1963 states that on adjudging the cancellation of an instrument, the court may require the party to whom such relief is granted to make any compensation to the other which justice may require. Basically, this provision means that the party who wants the cancellation of instrument from the court must restore the benefit it received under instrument. In the present case, appellant wants the cancellation of instrument and also restoration of benefit; therefore, he can't claim the benefit of refund under Specific Relief Act.

In order to rectify the situation of minor agreement, Law Commission in its 13th Report suggested that an explanation to the Section 65 should be added that and it should be made applicable to minor agreements too.

The various courts have developed the equitable doctrine of restitution in the case of minor's agreement. According to this doctrine, if the benefit received by minor under the transaction are either goods or anything else other than the money, then such goods or things as long as traceable shall be restored back to bonafide party to an agreement. However, the law regarding restitution of money i.e. where the benefit received under the transaction is in the form of money has not yet

been settled; regarding this view courts have difference of opinion. The settled law is that agreements with the minor are void ab initio.

2.2 Free Consent:-

As per section 14 of the Indian Contract Act, 1872 consent is said to be free in the absence of the following**:-**

a. Coercion (Section 15)
b. Undue influence (Section 16)
c. Fraud (Section 17)
d. Misrepresentation (Section 18)
e. Mistake (Section 20, 21, 22)

Coercion – Section 15

A) Meaning of coercion –

Coercion means –

a) committing or threatening to commit any act forbidden (prohibited) by Indian Penal Code against another person; or

b) unlawful detaining or threatening to detain the property of another person

c) with a view to obtain consent of another person

B) Who can exercise coercion –

Coercion may come from a person party to the contract or even third person not connected with the contract directly.

C) Important points –

a) **Prosecution –** A mere (only) threat to prosecute a man or file suit against him does not constitute a coercion.

b) **High prices and high interest Rates –** Charging high interest rate, high price etc. is not a coercion as the same is not prohibited under the Indian Penal code.

c) **A threat to commit suicide –** Consent to an agreement may at times be obtained by threatening to commit suicide. Threat to commit suicide also amounts to coercion.

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

a) Agreement is voidable at the **option of aggrieved party**.

b) Aggrieved party has the option to cancel (rescind) the contract.

c) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

A) Meaning of undue influence –

A contract is said to be caused by "undue influence" where the relations subsisting (existing) between the parties are such that one of the parties is in a position to dominate the will of the other and the former party uses that position to obtain an unfair advantage over the other.

B) Circumstances under which a person is presumed to be in a dominating position

a) Where he holds a real or apparent authority over the other (e.g. master and servant)

b) where he stands in a fiduciary (trust) relation to the other (e.g. Doctor and patient)

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

It is worthwhile to mention that----

The burden of proving that the contract was not induced by undue influence shall lie upon the person in a position to dominate the will of the other

C) There is presumption of undue influence in the following relationships –

a) Parent and child

b) Guardian and ward

c) Doctor and patient

d) Solicitor and client

e) Trustee and beneficiary

f) Religious advisor and disciple

g) Fiancé and fiancée

D) However, there is no presumption of undue influence in case of relationship of —

a) landlord and tenant

b) debtor and creditor

c) Husband and wife.

E) What will be the effect if the consent is caused by Undue influence – Section 19

a) Agreement is voidable at the option of aggrieved party.

b) Aggrieved party has the option to cancel (rescind) the contract.

c) If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person

Definition and concept of fraud:-

A) Meaning of fraud –

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

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

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

iii. A promise made without any intention of performing it;

iv. Any other act fitted to deceive;

v. Any such act which the law specially declares to be fraudulent

B) Is mere silence a fraud?

i. Whether silence is fraud or not depends upon various factors.

ii. Normally speaking, silence does not amount to fraud.

iii. However, silence will be considered as fraud in the following situations –

a) When there is a duty to speak

b) Where silence is equivalent to speech.

c) Where there is change in circumstances

C) What will be the effect if the consent is caused by Fraud – Section 19

i. Agreement is voidable at the option of aggrieved party.

ii. Aggrieved party has the option to cancel (rescind) the contract.

iii. If aggrieved party decides not to cancel the contract then he may continue the contract and claim damages from the other party.

iv. If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person.

Misrepresentation – Section 18 of Indian Contract Act, 1872

A) Meaning –

i. A representation when wrongly made either innocently or intentionally is a misrepresentation. When it is made innocently or unintentionally it is misrepresentation and when made intentionally or willfully it is fraud.

ii. Misrepresentation means making any statement as true but actually that statement is false.

B) What will be the effect if the consent is caused by Undue influence – Section 19

i. Agreement is voidable at the option of aggrieved party.

ii. Aggrieved party has the option to cancel (rescind) the contract.

iii. If the aggrieved party decides to rescind the contract, he must return (restore) all the benefits received by such person

Mistake of law – Section 21:-

Mistake of law of the country –

1) When a party enters into a contract, without the knowledge of law in the country, the contract is valid and not void.

2) A contract is not voidable because it was caused by a mistake as to any law in force in India.

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

Mistake of law of foreign country –

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

Mistake of fact – Section 20

A) Bilateral mistake -

1) Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, the agreement is void.

2) Mistake must be mutual i.e. both the parties should misunderstand each other

Types of mistakes falling under bilateral mistake are as follows –

(a) Mistake as to existence of subject matter: If both the parties are at mutual mistake as to existence of the subject matter the agreement is void.

(b) Mistake as to identity of subject matter: It usually happens when both the parties have different subject matter of contract in their mind. The contract is void due to mistake of identify of subject matter.

(c) Mistake as to the quality of the subject matter: If the subject matter is something essentially different from what the parties thought to be, the agreement is void.

(d) Mistake as to quantity of subject matter: Bilateral mistake as to quantity of subject matter would render the contract void.

(e) Mistake as to title of subject matter: The agreement is void due to bilateral mistake as to title of the subject matter.

(f) Mistake as to price of the subject matter: Mutual mistake as to price of the subject matter would render the agreement void.

(g) Mistake as to possibility of performance of Contract - Impossibility may be:

Physical impossibility: A contract is void if it is identified to be non-feasible (not possible) due to physical factors, like time, distance, height, etc.

Legal impossibility: A contract is void if it provides that something shall be done which as a matter of law cannot be done.

B) Unilateral Mistake as to fact – Section 22

1) A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact.

2) A unilateral mistake is not allowed as a defense in avoiding a contract unless the mistakes brought about by another party’s fraud or misrepresentation.

Section 23 of the Indian Contract Act, 1872 provides that the consideration or object of an agreement is unlawful if it is –

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

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

Void and Illegal Contracts –

Consequence of Illegal Agreements

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

Agreements Void as being opposed to Public Policy –

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

a) **Agreement in restrain (restrict) of parental rights:** An agreement by which a party deprives himself of the custody of his child is void.

b) **Agreement in restraint of marriage:** An agreement not to marry at all or not to marry any particular person or class of persons is void as it is in restraint of marriage.

c) **Marriage brokerage or brokerage Agreements:** An agreement to procure marriage for reward is void. Where a purohit (priest) was promised Rs.200 in consideration of procuring a wife for the defendant, the promise was held void as opposed to public policy, and the purohit could not recover the promised sum.

d) **Agreements in restraint of personal freedom are void:** Where a man agreed with his money lender not to change his residence, or his employment or to part with any of his property or to incur any obligation on credit without the consent of the money lender, it was held that the agreement was void.

e) **Agreement in restraint of trade:** An agreement in restraint of trade is one which seeks to restrict a person from freely exercising his trade or profession.

2.3 Void Agreements –

Following agreements have been expressly declared to be void by the Indian Contract Act, 1872–

a) Agreement by a minor – Section 11 of Indian Contract Act,1872

b) Agreement by a person of unsound mind– Section 12 of Indian Contract Act,1872

c) Agreement made under a bilateral mistake of fact – Section 20 of Indian Contract Act,1872

d) Agreement of which the consideration or object is unlawful – Section 23 of Indian Contract Act,1872

e) Agreement of which the consideration or object is unlawful in part – Section 24 of Indian Contract Act,1872

f) Agreement made without consideration – Section 25 of Indian Contract Act,1872

g) Agreement to do impossible acts

h) Agreement in restraint of marriage – Section 26 of Indian Contract Act,1872

i) Agreement in restraint of trade – Section 27 of Indian Contract Act,1872

j) Agreement in restraint of legal proceedings – Section 28 of Indian Contract Act,1872

k) Agreements void for uncertainty – Section 29 of Indian Contract Act,1872

l) Wagering agreement -- Section 30 of Indian Contract Act,1872

Expressly Void Agreements

The Indian Contract Act 1872 defines a void agreement as "an agreement that is not enforceable by law". And there can be many times of void agreements, some of which we have covered in the previous articles. But the contract states certain agreements that are expressly declared as void agreements. Let us take a look.

1] Agreement in Restraint of Marriage

Any agreement that restrains the marriage of a major (adult) is a void agreement. This does not apply to minors. But if an adult agrees for some consideration not to marry, such an agreement is expressly a void agreement according to the contract act.

So A agrees that if B pays him 50,000/- he will not marry such an agreement is a void agreement.

2] Agreement in Restraint of Trade

An agreement by which any person is restrained from plying a trade or practicing a legal profession or exercising a business of any kind is an expressly void agreement. Such an agreement violates the constitutional rights of a person.

However, there are a few exceptions to this rule. If a person sells his business along with the goodwill then the buyer can ask the seller to refrain from practicing the same business at the local limits.

So if according to such an agreement as long as the buyer or his successor carry on such a business the agreement to restrain the trade of the seller will be valid.

3] Agreement in Restraint of Legal Proceedings

An agreement that prevents one party from enforcing his legal rights under a contract through the legal process (of courts, arbitration, etc) then such an agreement is expressly void agreement.

However, there are exceptions like, if the agreement states that any dispute between parties will be referred to arbitration and the amount awarded in such arbitration will be final will be a valid contract.

4] An Agreement Whose Meaning is Uncertain

An agreement whose meaning is uncertain cannot be a valid agreement, it is a void agreement. If the essential meaning of the contract is not assured, obviously the contract cannot go ahead. But if such uncertainty can be removed, then the contract becomes valid.

Say for example A agrees to sell to B 100 kg of fruit. This is a void contract since what type of fruit is not mentioned. But if A exclusively sells only oranges then the agreement would be valid because the meaning would now be certain.

5] Wagering Agreement

According to the Indian Contract Act, an agreement to wager is a void agreement. The basis of a wager is that the agreement depends on the happening or non-happening of an uncertain event. Here each side would either win or lose money depending on the outcome of such an uncertain event.

The essentials of a wagering agreement are as follows. If all elements are met then the agreement will be void.

- Must contain a promise to pay money or money's worth
- Is conditional on the happening or non-happening of a certain event
- The event must be uncertain. Neither party can have any control over it
- Must be the common intention to bet at the time of making the agreement
- Parties should have no other interest other than the stake of the bet

The following agreements are not considered wagering agreements,

i. Chit Fund
ii. Commercial Transactions, i.e Transactions of the Share MArket
iii. Athletic Competition and Competitions involving Skills
iv. Insurance Contracts

Contingent Contract – Section 31-36 of Indian Contract Act, 1872

A) Section 31 defines contingent contract as follows –

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

Example –

Vasuli Bhai contracts to pay Bappi Bhai 5 lakh rupees if Bappi Bhai's house is burnt. This is a contingent contract.

Contracts of insurance, indemnity and guarantee are also example of contingent contracts.

B) Essentials of Contingent Contract –

a) There must be a contract to do or not to do something

b) The performance of the contract depends upon the happening or non-happening of some event in future

c) The event must be uncertain (not fixed)

d) The event must be collateral or incidental to the contract

C) Rules regarding contingent contract –

1) Enforcement of contingent contracts on an event happening – Section 32

Contracts which are contingent upon the happening of a future uncertain event cannot be enforced by law unless and until that event has happened.

If the event becomes impossible, such contracts become void.

Example:

a) Alex promises to pay Peter 5,000 rupees if the ship reaches port. Now, contract will be enforceable (valid) if ship reaches the port. On the other hand if ship does not reaches port then contract will be void.

b) Janvi contracts to pay Hitesh a sum of 1 lakh rupees when Hitesh marries Makarand. Makarand dies without being married to Hitesh. The contract becomes void.

2) Enforcement of contracts contingent on an event not happening – Section 33

Contracts contingent upon the non-happening of an uncertain future event can be enforced when the happening of that event becomes impossible

Example: Alex agrees to pay Peter a sum of 10 lakh rupees if a certain ship does not return. The ship is sunk. The contract can be enforced after the ship sinks. On the other hand, if ship would have returned the contract would have become void.

3) Section 34 of Indian Contract Act,1872:- When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person the future event on which a contract is contingent is dependent on the future act of a living person then contract will become void if that person acts otherwise

Example – Sharvi agrees to pay Makarand 1 lakh rupees if Makarand marries Hitesh. Hitesh marries Gaurang. The marriage of Makarand to Hitesh must now be considered impossible, although it is possible that Gaurang may die and that Hitesh may afterwards marry Makarand.

4) When contracts become void which are contingent on happening of specified event within fixed time – Section 35

Contracts which are contingent upon the happening of a future uncertain event within a fixed time will becomes void if the contract does not happen within fixed time.

Example –

a) Alex promises to pay Peter 5,000 rupees if the ship reaches port within 1 year. Now, contract will be enforceable (valid) if ship reaches the port within one year. On the other hand, if ship does not reach port within 1 year then contract will be void.

b) Alex promises to pay Peter 5,000 rupees if the ship does not reach port within 1 year. Now, contract will be enforceable (valid) if ship does not reach the port within one year. On the other hand, if ship reaches port within 1 year then contract will be void.

5) Agreements contingent on impossible events void – Section 36

Contingent agreements based on impossible event are void.

Example – Amerada promised Y to pay 1 Crore rupees if he brings Taj Mahal from Delhi to Mumbai. This contract is void contract.

3. Discharge of contract by Performance and Quasi Contract:-

Performance of contract

Meaning –

A. Every contract has certain obligations (duties) which are to be performed by the parties to the contract.

B. When both the parties to the Contract fulfill their obligations towards each other, the contract is said to be performed.

C. When both the parties to the contract have performed their obligations, the contract is said to be discharged by performance

Example -

X Promises to pay Y 5,000 Rupees. X may perform the obligation of giving 5,000 rupees to Y either by himself or he may appoint agent to perform the obligation.

If Adi dies before making the Payment then legal representative of Adi must perform the Promise.

Effect of Refusal to accept offer of Performance -Section 38 of Indian Contract Act, 1872

When the Promisor make offer to the Promise for the Performance of the contract and Promise does not accept it, then the Promisor is not responsible for non-Performance

Conditions –

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

Example:

There is a contract between "A" and "B" that "A" will deliver to "B" at his warehouse 100 Kg of Basmati rice of grade quality on the 1st March, 2014,. In order to make an offer of a Performance as Per section 38, "A" must bring the rice to the warehouse of "B" s, on the fixed date (1st March, 2014), under such circumstances that "B" may have a reasonable oPPortunity of satisfying himself that the thing offered is Basmati rice of the quality contracted for, and that there are 100 kg of rice.

a) If the Promisor refuses to perform the contract wholly, the Promisee may Put an end to the contract.

b) However, if the Promisee has agreed to accept the Performance even if it is not performed wholly then the contract will continue.

When a Promisee accepts Performance of the Promise from a third Person, he cannot afterwards enforce it against the Promisor.

Devolution of Joint Liabilities—Section 42, 43 and 44 of Indian Contract Act, 1872

1. Liability of joint Promisor is joint and several
2. If any joint Promisor dies, his legal representatives must jointly with the

surviving Promisors fulfil the Promise.

3. On the death of all the joint Promisors, the representatives of all of them

must jointly fulfil the Promise.

4. The Promisee may compel (force) anyone of the joint Promisor to Perform

the Promise –

5. Where a Promisee releases one of the joint Promisors, the release of one Promisor does not discharge the other joint Promisors – Section 44

Note –

a) Each Promisor may compel contribution–

Everyone will contribute equally or as per the terms and conditions agreed between the joint Promisor.

b) Sharing of loss by default in contribution–

If any one of two or more joint Promisors makes default in such contribution, the remaining joint Promisors must bear the loss arising from such default in equal shares.

When a Person has made a Promise to two or more Persons jointly then the right to claim Performance rests with all the joint Promisee and if any of the joint Promisee dies then the legal representative of that joint Promisee along with the surviving joint Promisee shall claim the Performance. If all the joint Promise die the legal representative of all joint Promisee shall claim the Performance.

Time and Place for Performance of Contract – Section 46-50

1) Time for Performance of Promise, where no application is to be made and no time is specified – Section 46

- Where the Promise is to be performed without application by the Promisee and

no time for the Performance is specified then the contract shall be

performed within reasonable time.

- Reasonable time differs case to case and if there is any dispute then court

will decide the reasonable time.

2) Time and Place for Performance of Promise, where time is specified and no application to be made – Section 47

Where the Promise is to be performed on fixed day without application by the Promisee then the Promisor may perform the Promise on that day during business hours and on such Place as specified.

3) Application for Performance on certain day to be at proper time and Place – Section 48

When a Promise is to be performed on a certain day and for that Promisee has to make applications to Promisor then it is the duty of the promisee to apply for performance at a proper Place and within the usual hours of business.

4) Place for Performance of Promise, where no applications to be made and no Place fixed for Performance – Section 49

When a Promise is to be performed without applications by the promisee and Place of Performance is not fixed then it is the duty of the Promisor to apply to the Promisee to appoint a reasonable Place for the Performance of the Promise

5) Performance in Manner or at time Prescribed or Sanctioned by Promisee – Section 50

example:

John Cena Promises to deliver a Car to Batista on a fixed day. John must apply to Batista to appoint a reasonable Place for the purpose of receiving it and must deliver it to him at such Place.

Where Promisee specifies the manner or time of Performance then Promisor should Perform Promise in the manner or time specified by the Promisee.

Performance of Reciprocal Promises – Section 51 – 54 and 57

1) Simultaneous Performance – Section 51

Promises are to be performed together by the Promisor as well as Promisee.

2) Order of Performance – Section 52

Promises should be performed in the fixed order and if no order is fixed then it can be performed in any manner

3) Liability of Party Preventing event on which the contract is to take effect – Section 53

Where one Party to a reciprocal Promise Prevents the other Party from Performing his Promise, the contract becomes voidable at the option of the Party who is so prevented. The aggrieved Party can also recover compensation.

4) Conditional and dependent – Section 54

Performance of the Promise by one Party depends on the Prior Performance of the Promise by

5) Legal and Illegal Reciprocal Promises – Section 57

1) An agreement to do an act impossible in itself is void.

2) Contract to do an act afterwards becoming impossible or unlawful —

A contract to do an act which, after the contract is made, becomes impossible or unlawful, or, by reason of some event which the Promisor could not prevent, becomes void when the act becomes impossible or unlawful.

3) In such cases, Promisor should compensate Promisee for any loss.

Examples:

a) A agrees with B to discover treasure by magic. The agreement is void

b) Hitesh and Makarand contract to marry each other. Before the time fixed for the marriage,. Hitesh goes mad. The contract becomes void

c) A contracts to take in cargo for B at a foreign Port. A's Government afterwards declares war against the country in which the Port is situated. The contract becomes void when war is declared

Where a debtor owes several debts to creditors then the Provisions of section 59-61 comes into Picture. There can be 3 situations for settlement of debt if debtor owes several debt to creditor

Meaning of Discharge of contract –

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

A) Discharge by Performance –

When the Parties to a contract fulfil the obligations arising under the contract within the time and manner Prescribed, then the contract is discharged by Performance.

Example: Peter agrees to sell his cycle to John for an amount of Rs 10,000 to be Paid by John on the delivery of the cycle. As soon as it is delivered, John Pays the Promised amount.

Since both the Parties to the contract fulfil their obligation arising under the contract, then it is discharged by Performance.

B) Discharge by agreement

The Parties may agree to terminate the existence of the contract by any of the following ways:

i. **Novation - Section 62**

a) Substitution of a new contract in Place of the existing contract is known as "Novation of Contract".

b) It discharges the original contract.

c) The new contract may be between the same Parties or between different Parties.

d) Novation can take Place only with the consent of all the Parties.

Example: X owes money to Y under a contract. It is agreed between X, Y and P that Y should accept P as his debtor, instead of X. The old debt of X and Y is at an end and a new debt from P to Y has been contracted. There is novation involving change of Parties.

ii. **Alteration - Section 62**

a) Alteration means change in one or more of the terms of the contract.

a) In case of novation there may be a change of the Parties, while in the case of alteration, the Parties remain the same.

b) But there is a change in the terms of the contract.

c) Alteration can take Place only with the consent of all the Parties

iii. **Rescission - Section 62**

It means the cancellation of the contract.

iv. **Remission – Section 63**

It means the acceptance of lesser fulfilment of the terms of the Promise

Example: Salman has borrowed ` 500 from Aishwarya. Salman agrees to accept ` 250 from Aishwarya in satisfaction of the whole debt. The whole debt is discharged

Waiver - Section 63

Waiver means giving up or foregoing certain rights. When a Party agrees to give uP its rights, the contract is discharged.

Example: A Promises to Paint a Picture of B. B afterwards forbids him to do so. A is no longer bound to perform the Promise.

C) Discharge of a Contract by Lapse of Time –

The Limitation Act, 1963 Prescribes a specified Period for Performance of contract. If the Promisor fails to Perform and the promisee fails to take action within this specified Period, then the promisee cannot seek remedy through law. It discharges the contract due to the lapse of time.

Example: Peter takes a loan from John and agrees to pay instalments every month for the next five years. However, he does not ay even a single instalment. John calls him a few times but then gets busy and takes no action. Three years later, he approaches the court to help him recover his money. However, the court rejects his suit since he has crossed the time-limit of three years to recover his debts.

D) Discharge by operation of law –

A contract may be discharged by operation of law in the following cases –

i. **Death** –

a) If contract involves Personal skill then contract is discharged

b) If contract does not involve Personal skill then the rights and liabilities of the deceased Person will pass on to his legal representatives.

ii. **Insolvency** –

The insolvency of the Promisor discharges the contract

iii. **Unauthorized material alteration –**

Material alteration in the terms of the contract without the consent of the other Party discharges the contract.

iv. **Merger** –

When inferior rights of a Person under a contract merge with superior rights under a new contract, the contract with inferior rights will come to an end. Examples: Where a Part-time lecturer is made full-time lecturer, merger discharges the contract of Part-time lecturer ship.

E) Discharge by breach of contract –

Breach means failure of a Party to perform his obligations under a contract. Breach brings an end to the obligations created by a contract.

F) Discharge by impossibility of Performance –

Impossibility of Performance results in the discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible thing

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

3.2 Doctrine of Supervening Impossibility:-

Meaning of Supervening Impossibility --

The doctrine of supervening impossibility is invoked when unforeseen circumstances render a contract's performance impossible, through no fault of the involved parties. Grounded in the maxim "Lex non cogit ad impossibilia," meaning the law does not compel the impossible, this doctrine applies under conditions like war, acts of God, law amendments or the death of a party.

For the doctrine to be applicable, the event causing impossibility must be one that the parties could not have foreseen at the contract's inception. Moreover, the unforeseen event should not be attributable to either party's fault and the contract's fulfillment under such conditions would diverge significantly from the original agreement.

Applicability of the Doctrine of Supervening Impossibility ----

The applicability of the doctrine of supervening impossibility, also known as the doctrine of frustration, is constrained by specific rules and limitations, ensuring its use is justified and appropriate:

- **Presumed Intentions of the Parties:** The doctrine relies on what the parties presumably intended when the contract was formed. It does not allow for implied conditions that contradict the contract's express terms.
- **Fault of the Parties:** If one or more parties are at fault for the event leading to the contract's impossibility, the doctrine cannot be invoked.
- **Exclusion of Commercial Impossibility:** The doctrine does not cover commercial impossibility. Difficulties in profitability or market changes that make the contract less desirable but still performable do not qualify for this doctrine.
- **Unmet Intentions or Terms:** This doctrine only applies when the fundamental intentions or terms agreed upon by both parties cannot be fulfilled due to the unforeseen event.
- **Multiple Performance Methods:** If the contract can be fulfilled through alternative methods despite the unforeseen event, the doctrine of supervening impossibility does not apply.

The Doctrine of Supervening Impossibility in Indian Law

The doctrine of supervening impossibility, also known as the doctrine of frustration, plays a significant role in the Indian Contract Act, 1872, particularly under Section 56. This legal

provision outlines the circumstances under which contracts are discharged due to subsequent impossibilities, ensuring fairness and justice in contractual obligations when unforeseen events occur.

Overview of Section 56

Section 56 of the Indian Contract Act divides the concept of impossibility into three distinct parts:

Initial Impossibility

This aspect addresses contracts that are void ab initio, meaning they are impossible from the beginning. Examples include contracts to perform inherently impossible tasks, such as reviving the dead or finding treasure through magic. For instance, if a person already married to one individual contracts to marry another, such a contract is null from the outset due to existing marital obligations.

Supervening Impossibility or Frustration

This is the core of the doctrine of frustration, which renders a contract void if it becomes impossible or unlawful due to an event that occurs after the contract has been formed and which was not foreseen by the parties. This could include scenarios such as the insanity of a party expected to perform a personal act or geopolitical events like war that prevent the fulfillment of a contract.

Compensation for Non-Performance

If a party knew or should have known with reasonable diligence that performance might become impossible or unlawful and the other party was unaware, the informed party is liable to compensate the other for any losses incurred due to non-performance.

Case Laws on Doctrine of Supervening Impossibility:-

The application of the doctrine of supervening impossibility is well-illustrated through notable case laws that clarify its boundaries and implications:

Satyabrata Ghose v. Mugneeram Bangur and Co. 1954 AIR 44, 1954 SCR 310

In Satyabrata Ghose v. Mugneeram Bangur and Co., the Supreme Court addressed a situation where the defendant had committed to developing a Plot of land by constructing roads and drains before selling it to the Plaintiff. However, a Part of the land was requisitioned for military use. The Court ruled that the contract did not become impossible to Perform as Per Section 56 of the Indian Contract Act, since the requisition affected only Part of the land, not preventing the overall development and subsequent transfer of the property.

Sushila Devi v. Hari Singh 1971 AIR 1756 1971 SCR 671

This case involved a property lease contract that became complicated when the leased property, located in Gujranwala, became part of Pakistan after the partition of India. The Supreme Court expanded the interpretation of 'impossibility' under the Act, suggesting that it encompasses not only practical impossibility but also impracticability concerning the object and purpose of the contract. The court recognized that the partition, a significant supervening event, fundamentally disrupted the contract's basis, thus leading to its frustration.

3.3 Meaning of quasi contract –

1) It is an implied contract. It is imposed by law and does not arise by agreement

2) The duty of a Party and not the Promise of any Party is the basis of such contract.

3) It is based on the principle of "Prevention of unjust enrichment of one Person at the cost of another"

4) It is imposed by law and does not arise by agreement.

5) No essential of valid contract is required

6) The right is available against specific Persons and not the whole world

a) Claims for necessaries supplied – Section 68

Where necessaries are supplied to a Person who is incompetent to contract, the supplier is entitled to recover the Price from the Property of the incompetent Person.

Example: X supplies Y, a minor, with necessaries suitable to his condition in life. X is entitled to be reimbursed from Y's Property.

b) Payment by a Person Having Some Interest in Payment – Section 69

i) The Person making the Payment must have some interest in paying the amount.

The Person making the A Person who is interested in the Payment of money of which another is bound (liable) by law to pay, and who therefore, Pays it, is entitled to be reimbursed by the other Conditions:

ii) Payment must not be bound by law to pay the amount.

iii) The other Person from whom the money is sought to be recovered must be legally bound to

Pay the money.

c) Claim for any benefit received under a non-gratuitous act – Section 70

When a Person lawfully does anything for another Person or delivers anything to him, not intending to do so gratuitously, such Person who enjoys the benefit must reimburse the former

or

must restore to him the thing so delivered.

Conditions:

i. The Person must lawfully do something for another Person or deliver something to him.

ii. The Person doing some act or delivering something must not intend to act gratuitously

iii. The other Person must voluntarily accept the acts or goods and he must have enjoyed their benefits

Responsibility of finder of goods – Section 71

A Person who finds goods belonging to another and takes them into his custody is liable as a bailee. The finder of goods must try to find out the real owner of the goods and deliver the goods to him on demand.

e) Money Paid by mistake or under coercion – Section 72

A Person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

Example: Ram and Y jointly owe 1,000 rupees to Madhu. Ram alone Pays the amount to Madhu, and Y, not knowing this fact, later on also Pays 1,000 to Madhu. Madhu is bound to repay the amount to B.

4. Breach of Contract and Remedies for breach of contract (Section 73-75 of Indian Contract Act, 1872)

Meaning of breach of contract –

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

a) Anticipatory Breach of Contract:-

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

Examples –

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

b) . Peter enters into a contract with John on June 01, 2018. As Per the contract, Peter agrees to sell his guitar to John on June 10, 2018, for an amount of Rs. 5,000. However, he sells this guitar to Oliver on June 07, 2018. Hence, it is an anticipatory breach of contract due to Peter's conduct.

When a Promisor refuses to perform his Promise leading to an anticipatory breach of contract, the promise is excused from Performance or from further Performance of his obligations. Also, he can either:

- Treat the contract as cancelled and file a suit against the other Party for damages arising from the breach. This suit can be filed immediately without waiting until the date of Performance specified in the contract.

or

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

Actual Breach of Contract:-

While an anticipatory breach is before the time of performance, an actual breach of contract is on the scheduled time of Performance of the contract. An actual breach of contract can be committed either:

1] At the time when the Performance of the Contract is Due

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

2] During the Performance of the Contract

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

Remedies for Breach of Contract:–

a) **Recession of Contract**

When one of the Parties to a contract does not fulfil his obligations, then the other Party can rescind the contract and refuse the Performance of his obligations.

As Per section 65 of the Indian Contract Act, the Party that rescinds the contract must restore any benefits he got under the said agreement. And section 75 states that the Party that rescinds the contract is entitled to receive damages and/or compensation for such a recession

b) **Sue for Damages**

Section 73 clearly states that the Party who has suffered, since the other Party has broken Promises, can claim compensation for loss or damages caused to them in the normal course of business.

Such damages will not be Payable if the loss is abnormal in nature, i.e. not in the ordinary course of business. There are two types of damages according to the Act,

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

c) Sue for Specific Performance

This means the Party in breach will actually have to carry out his duties according to the contract. In certain cases, the courts may insist that the Party carry out the agreement.

So if any of the Parties fails to perform the contract, the court may order them to do so. This is a decree of specific Performance and is granted instead of damages.

For example, A decided to buy a Parcel of land from B. B then refuses to sell. The courts can order B to perform his duties under the contract and sell the land to A.

d) **Injunction**

An injunction is basically like a decree for specific Performance but for a negative contract. An injunction is a court order restraining a Person from doing a Particular act.

So, a court may grant an injunction to stop a Party of a contract from doing something he promised not to do. In a Prohibitory injunction, the court stops the commission of an act and in a mandatory injunction, it will stop the continuance of an act that is unlawful.

e) **Quantum Meruit**

Quantum Meruit literally translates to “as much is earned”. At times when one Party of the contract is prevented from finishing his Performance of the contract by the other Party, he can claim Quantum Meruit.

So he must be paid a reasonable remuneration for the Part of the contract he has already performed. This could be the remuneration of the services he has provided or the value of the work he has already done.

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