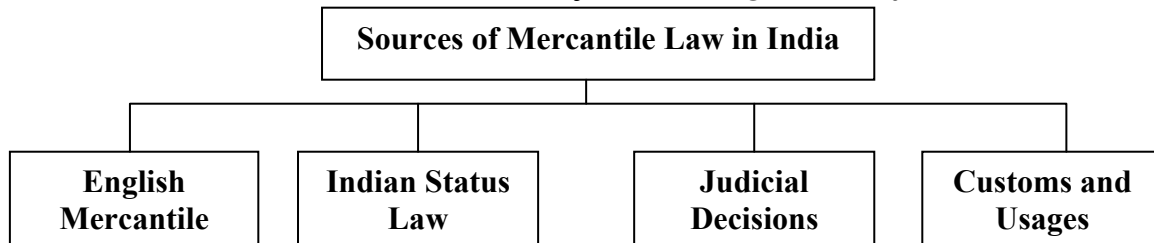


What is Law?

Law means a 'set of rules' which governs our behaviours and relating in a civilized society. So there is **no need of Law in a uncivilized society.**

Why Should One Know Law?

One should know the law to which he is subject because *ignorance of law is no excuse.*



STUDY NOTE – 1 : INDIAN CONTRACT ACT, 1872

Section 1:-

Commencement and applicability:-

Short Title	Extent and	commencement
The Indian contract Act 1872	Applicable to whole Indian except the state of Jammu & Kashmir	First day of September 1872(1 st Sept. 1872)

- Prior to this English law of contract was followed in India.
- It has **XI** chapter.
- Law of contract creates jus in **personem** and **not in jus in rem.**
- The Indian Contract Act consists of the following two parts:
 - (a) General principals of the Law of Contract.
 - (b) Special kinds of contracts.
- The general principals of the Law of Contract are contained in Sections 1 to 75 of the Indian Contract Act. These principles apply to all kinds of contracts irrespective of their nature.
- Special contracts are contained in Sections 124 to 238 of the Indian Contract Act. These special contracts are Indemnity, Guarantee, Bailment, pledge and Agency.

Note: In our discussion on this part of the book, unless otherwise stated, the sections mentioned are those of the Indian Contract Act, 1872.

Contracts as Defined by Eminent Jurists

1. "Every agreement and promise enforceable at law is a contract." – Pollock
2. "A Contract is an agreement between two or more persons which is intended to be enforceable at law and is contracted by the acceptance by one party of an offer made to him by the other party to do or abstain from doing some act." – Halsbury
3. "A contract is an agreement creating and defining obligation between the parties" – Salmond

DEFINITIONS (Sec 2)

1. **Offer(i.e. Proposal) [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 person either to such act or abstinence, he is said to make a proposal.
2. **Acceptance 2(b)**:- When the person to whom the proposal is made, signifies his assent there to , the proposal is said to be accepted.
3. **Promise 2(b) :-** A Proposal when accepted becomes a promise. In simple words, when an offer is accepted it becomes promise.
4. **Promisor and promise 2(c) :-** When the proposal is accepted, the person making the proposal is called as promisor and the person accepting the proposal is called as promisee.
5. **Consideration 2(d)**:- When at the desire of the promisor, the promisee or any other person *has done or abstained from doing something* or *does or abstains from doing something* or *promises to do or abstain from doing something*, such act or abstinence or promise is called a consideration for the promise.
- ❖ Price paid by the one party for the promise of the other Technical word meaning **QUID-PRO-QUO** i.e. *something in return*.
6. **Agreement 2(e) :-** Every promise and set of promises forming the consideration for each other. In short, agreement = offer + acceptance.
7. **Contract 2(h) :-** An agreement enforceable by Law is a contract.
8. **Void agreement 2(g)**:- An agreement not enforceable by law is void.
9. **Voidable contract 2(i)**:- An agreement is a voidable contract if it is enforceable by Law at the option of one or more of the parties there to (i.e. the aggrieved party), and it is not enforceable by Law at the option of the other or others.
10. **Void contract :-** A contract which ceases to be enforceable by Law becomes void when it ceases to be enforceable.

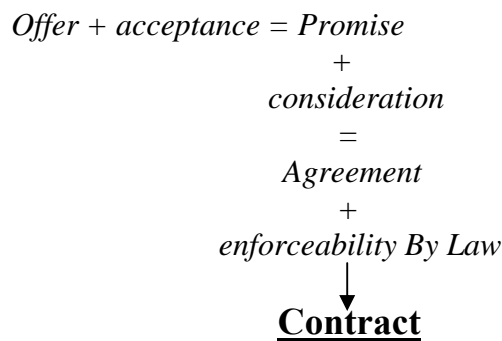
ESSENTIALS OF A VALID CONTRACT

“All agreements are contracts, if they are made –

- by free consent of the parties, competent to contract,
- for a lawful consideration and
- with a lawful object, and
- not hereby expressly declared to be void.”

- Sec.10.

ESSENTIALS OF VALID CONTRACT



1. Proper offer and proper acceptance with intention to create legal relationship.

Cases;- A and B agree to go to a movie on coming Sunday. A does not turn in resulting in loss of B's time B cannot claim any damages from B since the agreement to watch a movie is a domestic agreement which does not result in a contract.

- In case of social agreement there is no intention to create legal relationship and there the is no contract (Balfour v. Balfour)
- In case of commercial agreements, the law presume that the parties had the intention to create legal relations.
- [an agreement of a purely domestic or social nature is not a contract]

2. Lawful consideration :- consideration must *not* be *unlawful, immoral or opposed to the public policy.*

3. Capacity:- The parties to a contract must have capacity (legal ability) to make valid contract.

Section 11:- of the Indian contract Act specify that every person is competent to contract provided.

- (i) Is of the age of majority according to the Law which he is subject, and
- (ii) Who is of sound mind and
- (iii) Is not disqualified from contracting by any law to which he is subject.

- Person of unsound mind can enter into a contract during his lucid interval.
- An alien enemy, foreign sovereigns and accredited representative of a foreign state. Insolvents and convicts are not competent to contract.

4. Free consent :- consent of the parties must be genuine consent means agreed upon something in the same sense i.e. there should be consensus – ad – idem. A consent is

said to be free when it is not caused by *coercion, undue influence, fraud, misrepresentation or mistake.*

5. Lawful object

- The object of agreement should be lawful and legal.
- Two persons cannot enter into an agreement to do a criminal act.
- Consideration or object of an agreement is unlawful if it
 - (a) is forbidden by law; or
 - (b) is of such nature that, if permitted, would defeat the provisions of any law; or
 - (c) is fraudulent; or
 - (d) Involves or implies, injury to person or property of another; or
 - (e) Court regards it as immoral, or opposed to public policy.

6. Possibility of performance:

- The terms of the agreement should be capable of performance.
- An agreements to do act, impossible in itself cannot be enforced.

Example : A agrees to B to discover treasure by magic. The agreement is void because the act in itself is impossible to be performed from the very beginning.

7. The terms of the agreements are certain or are capable of being made certain [29]

Example : A agreed to pay Rs.5 lakh to B for ultra-modern decoration of his drawing room. The agreement is void because the meaning of the term “ ultra – modern” is not certain.

8. Not declared Void

- The agreement should be such that it should be capable or being enforced by law.
- Certain agreements have been expressly declared illegal or void by the law.

9. Necessary legal formalities

- A contract *may be oral or in writing.*
- Where a particular type of contract is required by law to be in writing and registered, it must comply with necessary formalities as to writing, registration and attestation.
- If legal formalities are not carried out then the contract is not enforceable by law.

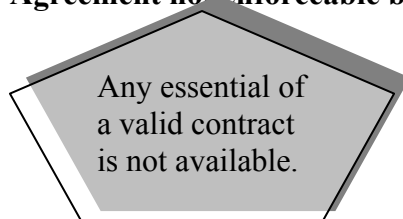
Example : A promise to pay a time. Barred debt must be in writing.

❖ Agreement is a wider term than contract where as all contracts are agreements. All agreements are not contracts.

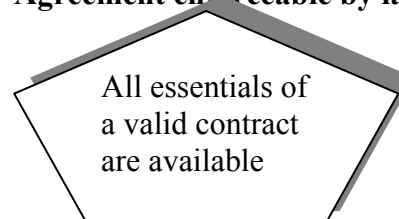
All Contracts are Agreements, but all Agreements are not Contracts

The various agreements may be classified into two categories:

Agreement not enforceable by law



Agreement enforceable by law



Conclusion:

Thus we see that an agreement may be or may not be enforceable by law, and so **all agreement are not contract**. Only those agreements are contracts, which are enforceable by law, In short.

Contracts = Agreement + Enforceability by Law

Hence, we can conclude “All contracts are agreement, but all agreements are not contracts.”

Distinction between Contract & Agreement

Basis	Contract	Agreement
1. Section :	Sec. 2(h)	Sec. 2(e)
2. Definition :	A contract is an agreement enforceable by law.	Every promise or every set of promises forming consideration for each other is an agreements.
3. Enforceability :	Every contract is enforceable	Every promise is not enforceable.
4. Interrelationship	A contract includes an agreement.	An agreement does not include a contract.
5. Scope :	The scope of a contract is limited, as it includes only commercial agreements.	Its scope is relatively wider, as it includes both social agreement and commercial agreements.
6. Validity :	Only legal agreements are called contracts.	An agreement may be both legal and illegal.
7. Legal Obligation :	Every contract contains a legal obligation.	It is not necessary for every agreement to have legal obligation.

Types of contracts :-

↓	↓	↓	↓
(1)	(2)	(3)	(4)
On the Basis of creation	On the Basis of Validity	On the Basis of execution	On the Basis of Liability
a. Express contract	a. Valid contract	a. Executed contract	a. Bilateral contract
b. Implied contract	b. Void contract	b. Executed contract	b. Unilateral
c. Tacit contract	c. Voidable contract	c. Partly executed and	contract
d. Quasi contract	d. Unenforceable	party executory	
e. E contract	e. Illegal contract		

I. On the Basic of Creation :

(a) Express contract :- A contract made by word spoken or written. According to **sec 9** in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express.

Example : A says to B ‘will you purchase my bike for Rs.20,000?’ B says to A “Yes”.

(b) Implied contract:- A contract inferred by

- ❖ The conduct of person or
- ❖ The circumstances of the case.

By implies contract means implied by law (i.e.) the law implied a contract through parties never intended. According to **sec 9** in so far as such proposed or acceptance is made otherwise than in words, the promise is said to be implied.

Example:

A stops a taxi by waving his hand and takes his seat. There is an implied contract that A will pay the prescribed fare.

(c) **Tacit contract:** - A contract is said to be tacit when it has to be inferred from the conduct of the parties. **Example** obtaining cash through automatic teller **machine**, sale by fall hammer of an auction sale.

(d). **Quasi Contracts are contracts which are created -**

- Neither by word spoken
- Nor written
- Nor by the conduct of the parties.
- But these are created by the law.

Example:

If Mr. A leaves his goods at Mr. B's shop by mistake, then it is for Mr. B to return the goods or to compensate the price. In fact, these contracts depend on the principle that nobody will be allowed to become rich at the expenses of the other.

(e). **e – Contract:** An e – contract is one, which is entered into between two parties via the internet.

III. On the Basis of Validity:

(a) **Valid contract:-** An agreement which satisfies all the requirements prescribed by law
On the basis of creation

(b) **Void contract (2(j)):-** a contract which ceases to be enforceable by law because void when of ceased to be enforceable
When both parties to an agreement are:-
Under a mistake of facts [20]
Consideration or object of an agreement is unlawful [23]
Agreement made without consideration [25]
Agreement in restraint of marriage [26]
Restraint of trade [27]
Restrain legal proceeding [28].
Agreement by wage of wager [30]

(c) **Voidable contract 2(i) :-** an agreement which is enforceable by law *at the option of one or more the parties but not at the option of the other or others is a voidable contract.*
Result of coercion, undue influence, fraud and misrepresentation.

(d) **Unenforceable contract:** - where a contract is good in substance but because of some ***technical defect*** i.e. absence in writing barred by imitation etc one or both the parties cannot sue upon but is described as unenforceable contract.
Example: Writing registration or stamping.

Example: An agreement which is required to be stamped will be unenforceable if the same is not stamped at all or is under stamped.

- (e) **Illegal contract:-** It is a contract which the law forbids to be made. All illegal agreements are void but all void agreements or contracts are not necessary illegal. Contract that is immoral or opposed to public policy are illegal in nature.
- ❖ Unlike illegal agreements there is no punishment to the parties to a void agreement.
 - ❖ Illegal agreements are void from the very beginning agreements are void from the very beginning but sometimes valid contracts may subsequently becomes void.

III. *On the basis of execution:-*

- (a) **Executed contract :-** A contract in which both the parties have fulfilled their obligations under the contract.
Example: A contracts to buy a car from B by paying cash, B instantly delivers his car.
- (b) **Executory contract:-** A contract in which both the parties have still to fulfilled their obligations.
Example : D agrees to buy V's cycle by promising to pay cash on 15th July. V agrees to deliver the cycle on 20th July.
- (c) **Partly executed and partly executory:-** A contract in which one of the parties has fulfilled his obligation but the other party is yet to fulfill his obligation.
Example : A sells his car to B and A has delivered the car but B is yet to pay the price. For A, it is excuted contract whereas it is executory contract on the part of B since the price is yet to be paid.
On the basis of liability for performance:-

IV. *On the Basis of Liability:*

- (a) **Bilateral contract:-** A contract in which both the parties commit to perform their respective promises is called a bilateral contract.
Example : A offers to sell his fiat car to B for Rs.1,00,000 on acceptance of A's offer by B, there is a promise by A to Sell the car and there is a promise by B to purchase the car there are two promise.
- (b) **Unilateral contract:-** A unilateral contract is a one sided contract in which only one party has to perform his promise or obligation party has to perform his promise or obligation to do or forbear.
Example :- A wants to get his room painted. He offers Rs.500 to B for this purpose B says to A " if I have spare time on next Sunday I will paint your room". There is a promise by A to pay Rs 500 to B. If B is able to spare time to paint A's room. However there is no promise by B to Paint the house. There is only one promise.

Difference Between Void and Voidable Contract

Matter	Void contract	Voidable contract
Definition	It means contract which cease to be enforceable.	It means an agreement enforceable by law by one or more parties.
Nature	Valid when made subsequently becomes unenforceable.	It remains voidable until cancelled by party.
Rights or remedy	No legal remedy.	Aggrieved party has remedy to cancel the contract.
Performance of contract	Party can't demand performance of contract	If aggrieved party does not cancel it within reasonable time, performance

		can be demanded.
Reason	Due to change in law or circumstances	If consent is not obtained freely.
Damages	Not available	Can demand in certain cases.

Difference between Void and illegal Agreement

Matter	Void agreement	Illegal agreement
What	Void agreement is not prohibited by law.	It is prohibited by law.
Effect on collateral transaction	Enforced	Not enforced.
Punishment	No	Yes
Void ab initio	May not be void ab initio	Always void initio

Contract of record:

It is either a judgment of a court of a Recognizance.

A Judgment is an obligation imposed by a Court upon one or more persons in favour of another or others. In real sense, it is not a contract, as it is not based upon any agreement between two parties.

Recognizance is a Bond by which a person undertakes before a Court of Magistrate to observe some condition e.g. to appear on summons.

Contracts of record derive their binding force from the authority of the Court.

Contract under Seal:

- (a) A contract under Seal is one which derives its binding force from its form alone.
- (b) It is in writing and signed, sealed and delivered by the parties.
- (c) It is also called a Deed or a Specialty contract.

OFFER

Offer(i.e. Proposal) [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 person either to such act or abstinence, he is said to make a proposal.

To form an agreement, there must be at least two elements – one offer and the other acceptance. Thus offer is the foundation of any agreement.

“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.”

The person who makes an offer is called **“Offeror”** or **“Promisor”** and the person to whom the offer is made is called the **“Offeree”** or **“Promisee”**.

Example

Mr. A says to Mr. B, “Will you purchase my car for Rs.1,00,000?” In this case, Mr. A is making an offer to Mr. B. Here A is the offeror and B is the offeree.

Essentials elements of an offer:-

- (1) *There must be two parties.*
- (2) *The offer must be communicated to the offeree.*
- (3) *The offer must show the willingness of offeror. **Mere telling the plan is not offer.***
- (4) *The offer must be made with a view to obtaining the assent of the offeree.*
- (5) *A statement made jokingly does not amount to an offer.*
- (6) *An offer may involve a positive act or abstinence by the offeree.*
- (7) *Mere expression of willingness does not constitute an offer.
A tells B’ that he desires to marry by the end of 2008, if does not constitute an offer of marriage by A’ to B’ A further adds will you marry me. Then it become offer.*

Legal Rules as to valid offer:-

1. ***Offer must be communicated to the offeree:*** The offer is completed only when it has been communicated to the offeree. Until the offer is communicated, it cannot be accepted. *Thus, an offer accepted without its knowledge, does not confer any legal rights on the acceptor.*

Example:

A’s nephew has absconded from his home. He sent his servant to trace his missing nephew. When he servant had left, A then announced that anybody who discovered the missing boy, would be given the reward of Rs.500. The servant discovered the missing boy without knowing the reward. When the servant came to know about the reward, he brought an action against A to recover the same. But his action failed. It was held that the

servant was not entitled to the reward because he did not know about the offer when the discovered the missing boy.

[Lalman Shukla v. Gauri Datt (1913) All LJ 489]

2. ***The offer must be certain definite and not vague unambiguous and certain.***

Example:

A offered to sell to B. 'a hundred tons of oil'. The offer is uncertain as there is nothing to show what kind of oil is intended to be sold.

3. ***The offer must be capable of creating legal relation. A social invitation is not create legal relation.***

Example:

A invited B to a dinner and B accepted the invitation. It is a mere social invitation. And A will not be liable if he fails to provide dinner to B.

4. ***Offer may be express and implied***

The offer may be express or implied; An offer may be express as well as implied. An offer which is expressed by words, written or spoken, is called an express offer. The offer which is expressed by conduct, is called an implied offer [Section 9].

5. ***Communication of complete offer***

Example:

A offered to sell his pen to B for Rs.1,000. B replied, "I am ready to pay Rs.950". On A's refusal to sell at this price, B agreed to pay Rs.1,000. held, there was not contract at the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound go give his acceptance.

6. ***Counter offer – A counter offer amounts to rejection of the original offer***

7. ***Cross offer do not conclude a contract***

8. ***An offer must not thrust the burden of acceptance on the offeree.***

Example:

A made a contract with B and promised that if he was satisfied as a customer he would favorably consider his case for the renewal of the contract. The promise is too vague to create a legal relationship.

- The acceptance cannot be presumed from silence.
- Acceptance is valid only if it is communicated to the offeror.

9. ***Offer must be distinguished from invitation to offer.***

Example:

Menu card of restaurant is an invitation to put an offer.

Example ;

Price – tags attached with the goods displayed in any showroom or supermarket is also an invitation to proposal. If the salesman or the cashier does not accept the price, the or the cashier does not accept the price, the interested buyer cannot compel him to sell, if he wants to buy it, he must make a proposal.

Example:

Job or tender advertisement inviting applications for a job or inviting tenders is an invitation to an offer.

Example:

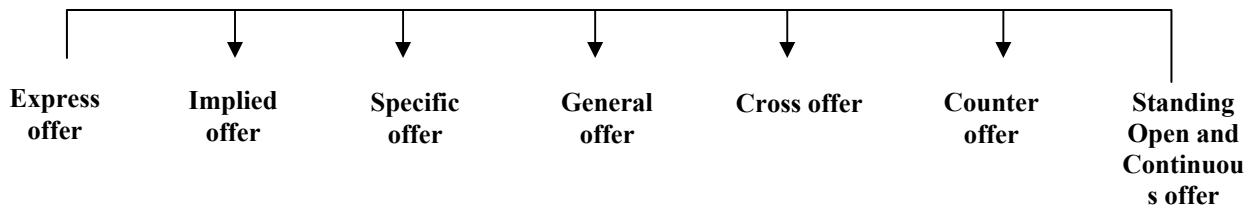
An advertisement for auction sale is merely an invitation to make an offer and not an offer for sale. Therefore, an advertisement of an auction can be withdrawn without any notice. The persons going to the auction cannot claim for loss of time and expenses if the advertisement for auction is withdrawn.

10. Offeror should have an intention to obtain the consent of the offeree.

11. An answer to a question is not a offer.

Offer	Invitation to offer
<ul style="list-style-type: none"> ➤ Show his readiness to enter into a contract, it is called as an offer ➤ Purpose of entering contract ➤ Results in a contract <p>Example Application filled in by a prospective applicable to the Institution, a student seeking admission in educational Institution.</p>	<ul style="list-style-type: none"> ➤ Person invites offer to make an offer to him. ➤ Purpose of enter offer ➤ Results in offer. <p>Example Issue of prospectus by a Company, an education Institution.</p>

KINDS OF OFFER



I. **Express offer** - When the offeror expressly communication the offer the offer is said to be an express offer the express communication of the offer may be made by
Spoken word
Written word

II. **Implied offer** – when the offer is not communicate expressly. An offer may be implied from:-
The conduct of the parties or
The circumstances of the case

III. **Specific:-** It means an offer made in
(a) a particular person or
(b) a group of person: It can be accepted only by that person to whom it is made communication of acceptance is necessary in case of specific offer.

IV. **General offer:-** - It means on offer which is made to the public in general.

- General offer can be accepted by anyone.
- If offeree fulfill the term and condition which is given in offer then offer is accepted.
- Communication of acceptance is not necessary is case of general offer

Example

Company advertised that a reward of Rs.100 would be given to any person who would suffer from influenza after using the medicine (Smoke balls) made by the company according to the printed directions.

One lady, Mrs, Carlill, purchased and used the medicine according to the printed directions of the company but suffered from influenza, She filed a suit to recover the reward of Rs.100. The court held that there was a contract as she had accepted a general offer by using the medicine in the prescribed manner and as such as entitled to recover the reward from the company.

Carlill v Carbolic Smoke Ball Co. 1893

- V. **Cross offer:-** When two parties exchange identical offers in ignorance at the time of each other's offer the offer's are called cross offer.

Two cross offer does not conclude a contract. Two offer are said to be cross offer if

1. *They are made by the same parties to one another*
2. *Each offer made in ignorance of the offer made by the*
3. *The terms and conditions contained in both the offers' are same.*

Example : A offers by a letter to sell 100 tons of steel at Rs.1,000 per ton. On the same day, B also writes to A offering to buy 100 tons of steel at Rs.1,000 per ton.

When does a contract come into existence: - A contract comes into existence when any of the parties, accept the cross offer made by the other party.

- VI **Counter offer :-** when the offeree give qualified acceptance of the offer subject to modified and variations in the terms of original offer. Counter offer amounts to rejection of the original offer.

Legal effect of counter offer:-

- (1) Rejection of original offer
- (2) The original offer is lapsed
- (3) A counter offer result is a new offer.

In other words an offer made by the offeree in return of the original offer is called as a counter offer.

Example:

A offered to sell his pen to B for Rs.1,000. B replied, " I am ready to pay Rs.950." On A's refusal to sell at this price, B agreed to pay Rs.1,000. Held, there was not contract as the acceptance to buy it for Rs.950 was a counter offer, i.e. rejection of the offer of A. Subsequent acceptance to pay Rs.1,000 is a fresh offer from B to which A was not bound to give his acceptance.

- VII **Standing, open and continuous offer:-** An offer is allowed to *remain open for acceptance over a period of time* is known as standing, open or continually offer. Tender for supply of goods is a kind of standing offer.

Example:

When we ask the newspaper vendor to supply the newspaper daily. In such case, we do not repeat our offer daily and the newspaper vendor supplies the newspaper to us daily. The offers of such types are called Standing Offer.

LAPSE OF AN OFFER

An offer should be accepted before it lapses (i.e. comes to an end). An offer may come to an end in any of the following ways stated in Section 6 of the Indian Contract Act:

1. **By communication of notice of revocation:** An offer may come to an end by communication of notice of revocation by the offeror. It may be noted that an offer can be revoked only before its acceptance is complete for the offeror. In other words, an offeror can revoke his offer at any time before he becomes bound by it. Thus, the communication of revocation of offer should reach the offeree before the acceptance is communicated.
2. **By lapse of time;** Where time is fixed for the acceptance of the offer, and it is not acceptance within the fixed time, the offer comes to an end automatically on the expiry of fixed time. Where no time for acceptance is prescribed, the offer has to be accepted within reasonable time. The offer lapses if it is not accepted within that time. The term 'reasonable time' will depend upon the facts and circumstances of each case.
3. **By failure to accept condition precedent:** Where, the offer requires that some condition must, be fulfilled before the acceptance of the offer, the offer lapses, if it is accepted without fulfilling the condition.
4. **By the death or insanity of the offeror:** Where, the offeror dies or becomes, insane, the offer comes to an end if the fact of his death or insanity comes to the knowledge of the acceptor before he makes his acceptance. But if the offer is accepted in ignorance of the fact of death or insanity of the offeror, the acceptance is valid. This will result in a valid contract, and legal representatives of the deceased offeror shall be bound by the contract. On the death of offeree before acceptance, the offer also comes to an end by operation of law.
5. **By counter – offer by the offeree:** Where, a counter – offer is made by the offeree, and then the original offer automatically comes to an end, as the counter – offer amounts to rejections of the original offer.
6. **By not accepting the offer, according to the prescribed or usual mode:** Where some manner of acceptance is prescribed in the offer, the offeror can revoke the offer if it is not accepted according to the prescribed manner.
7. **By rejection of offer by the offeree:** Where, the offeree rejects the offer, the offer comes to an end. Once the offeree rejects the offer, he cannot revive the offer by subsequently attempting to accept it. The rejection of offer may be express or implied.
8. **By change in law:** Sometimes, there is a change in law which makes the offer illegal or incapable of performance. In such cases also, the offer comes to an end.

ACCEPTANCE

Acceptance 2(b):- When the person to whom the proposal is made, signifies his assent there to, the proposal is said to be accepted.

Legal Rules for the Acceptance

1. Acceptance must be absolute and unqualified

Example: A offers to sell his house to B for Rs. two lakhs. B accepts the offer and promises to pay the price in four installments. This is not the acceptance as the acceptance is with variation in the terms of the offer.

2. Acceptance must be communicated: Mere mental acceptance is no acceptance, But there is no requirement of communication of acceptance of general offer.

Example The manager of Railway Company received a draft agreement relating to the supply of coal. The manager marked the draft with the words “Approved” and put the same in the drawer of his table and forgot all about it. Held, there was no contract between the parties as the acceptance was not communicated. It may however, be pointed out that the Court construed a conduct to parties as railway company was accepting the supplies of coal from time to time.

3. Manner of acceptance

General rule say that it must be as per the manner prescribed by offeror. If no mode is prescribed in which it can be accepted, then it must be in some usual and reasonable manner.

4. If there is deviation in communication of an acceptance of offer, offeror may reject such acceptance by sending notice within reasonable time. If the offeror doesn't send notice or rejection, he accepted acceptance of offer.

Example: A offers B and indicates that the acceptance be given by telegram. B sends his acceptance by ordinary post. It is a valid acceptance unless A insists for acceptance in the prescribed manner.

5. Acceptance of offer must be made by offeror.

Example : A applied for the headmastership of a school. He was selected by the appointing authority but the decision was not communicated to him. However, one of members in his individual capacity informed him about the selection. Subsequently, the appointing authority cancelled its decision. A sued the school for breach of contract. The Court rejected the A's action and held that there was no notice of acceptance. “Information by unauthorized person is as insufficient as overhearing from behind the door”.

6. Acceptance must be communicated to offeror

7. Time limit for acceptance

- If the offer prescribes the time limit, it must be accepted within specified time.
- If the offer does not prescribe the time limit, it must be accepted within reasonable time.

Example : A applied (offered) for shares in a company in early June. The allotment (Acceptance) was made in late November. A refused to take the shares. Held, A was entitled to do so as the reasonable time for acceptance had elapsed.

8. **Acceptance of offer may be** expressly (by words spoken or written); or impliedly (by acceptance of consideration); or by performance of conditions (e.g.in case of a general offer)
9. **Mere silence is not acceptance of the offer**
Example A offers to B to buy his house for Rs.5 lakhs and writes “If I hear no more about it within a week, I shall presume the house is mine for Rs.5 lakhs. “B does not respond. Here, no contract is concluded between A and B.
10. **However, following are the two exceptions to the above rule. It means silence amounts as acceptance of offer.**
- Where offeree agrees that non – refusal by him within specified time shall amount to acceptance of offer.
 - When there is custom or usage of trade which specified that silence shall amount to acceptance.
11. **Acceptance subject to the contract is no acceptance**
 If the acceptance has been given ‘subject to the contract’ or subject to approval by certain persons, it has not effect at all. Such an acceptance will not create binding contract until a formal contract is prepared and signed by all the parties.

General Rules as to Communication of Acceptance

1. **In case of acceptance by post**
 Where the acceptance is given by post, the communication of acceptance is complete as against the proposer when the letter of acceptance is posted. Thus, mere posting of letter of acceptance is sufficient to conclude a contract. However, the letter must be properly addressed and stamped.
2. **Delayed or no delivery of letter**
 Where the letter of acceptance is posted by the acceptor but it never reaches the offeror, or it is delayed in transit, it will not affect the validity of acceptance. The offeror is bound by the acceptance.
3. **Acceptance by telephones telex or fax**
 If the communication of an acceptance is made by telephone, tele-printer, telex, fax machines, etc, it completes when the acceptance is received by the offeror. The contract is concluded as soon as the offeror receives not hears the acceptance.
4. **The place of Contract**
 In case of acceptance by the post, the place where the letter is posted is the place of contract. Where the acceptance is given by instantaneous means of communication (telephone, fax, tele-printer, telex etc.), the contract is made at the place where the acceptance is received,
5. **The time of Contract**
 In case of acceptance by post, the time of posting the letter of acceptance to the time of contract. But in case of acceptance by instantaneous means of communication, the time of contract is the time when the offeror gets the communication, the time of contract is the time when offeror gets the communication of acceptance.
6. **Communication of acceptance in case of an agent.**
 Where the offer has been made through an agent, the communication of acceptance is completed when the acceptance is given either to the agent or to the principal. In such a

case, if the agent fails to convey the acceptance received from offeree, still the principal is bound by the acceptance.

7. Acceptance on loudspeakers

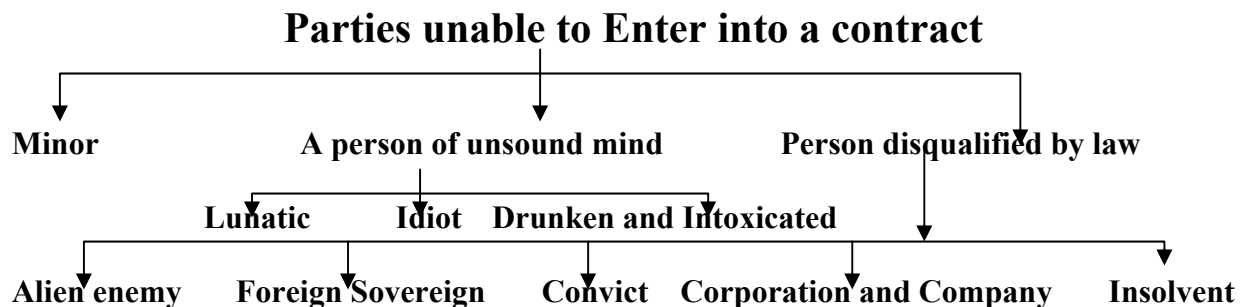
Acceptance given on loudspeaker is not a valid acceptance.

Particulars	Offer	Acceptance
When Communication is complete [Sec.4]	<ul style="list-style-type: none"> • Communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. • Example : A proposes by letter, to sell his Tonga to B at Rs.10,000. Communication of the proposal is complete when B receives the letter. 	<ul style="list-style-type: none"> • As against the offerer/ Proposer: When it is put in a course of transmission to him so as to be out of the power of the Acceptor. • As against the Offeree/Acceptor: When it comes to the knowledge of the Proposer. (See separate question above)
When Revocation can be made [Sec.5]	<ul style="list-style-type: none"> • Offer/proposal may be revoked at any time before the communication of its acceptance is complete, as against the proposer, but not afterwards. • Example: U sends a letter to Y proposing to sell his land. Y sends his acceptance by post. U can revoke the offer at any time before or at the moment when Y posts his letter of acceptance, but not afterwards. 	<ul style="list-style-type: none"> • Acceptance may be revoked at any time before the communication of acceptor, but not afterwards. • Example: T sends to S by post, an offer to sell his cycle. S sends his acceptance via post, S could revoke his acceptance, upto any time before or at the moment when he posts his letter of acceptance, but not afterwards.
When communication of revocation is complete [Sec.4]	<ul style="list-style-type: none"> • As against the offeror: When it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it. • Example : S proposes to H by letter. H sends his acceptance by letter. Suddenly, S sends a telegram revoking his offer. Revocation is complete as against S when the telegram is dispatched; H's revocation of acceptance is complete when S receives such telegram. 	<ul style="list-style-type: none"> • As against the Offeree: When it comes to his knowledge. • Example : Communication of revocation is complete only when H receives the telegram. • When H revokes his acceptance, it is complete when he dispatches the telegram.

Accepted is lighted match, while offer is a train of gun powder

Sir willian Anson.

CAPACITY TO CONTRACT



1. Who is competent to make a contract:-

Section 11. Every person is competent to contract who is of *age of majority* according to the Law to which he is subject, who is of *sound mind* and not is *disqualified from contracting* by any Law to which he is subject.

Age of majority:- According to *section 3 of Indian majority Act-1875* every person domiciled in Indian attains majority on the completion of 18 years of age.

Exception: - *21 years*- in the following cases.

- a. Where a guardian of a minor's person or property is appointed under the Guardian and wards Act, 1890.
- b. Where minor's property has passed under the superintendence of the court of wards.

Position of Agreements by Minor:-

1. **Validity:** - *An agreement with a minor is void-ab-initio*
[*Mohoribibee v. Dharmodas Ghose*]

Example :

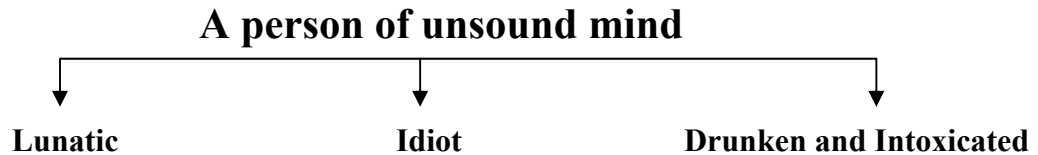
Mr. D, a minor, mortgaged his house for Rs.20000 to a money – lender, but the mortgagee, i.e. the money – lender, paid him a sum of Rs.8000. Subsequently, the minor sued for setting aside the mortgage. Held that the contract was void, as Mr. D was minor and therefore he is not liable to pay anything to the lender.

2. *A minor's has received any benefit under a void contract, he cannot be asked to return the same.*
3. *If a minor has received any benefit under a void contract, he cannot be asked to return the same.*
4. *Fraudulent representation by a minor- no difference in the status of agreement. The contract remains void.*
5. *A minor with the consent of all the partners, be admitted to the benefits of an existing partnership.*
6. *Contracts entered into by minors are void-ab-initio. Hence no specific performance can be enforced for such contracts.*

7. *Minor's parent/guardians are not liable to a minor's creditor for the breach of contract by the minor.*
8. *A minor can act as an agent but not personally liable. But he cannot be principal.*
9. *A minor cannot become shareholder of a the company except when the shares are fully paid up and transfer by share.*
10. *A minor cannot be adjudicated as insolvent.*
11. *Can enter into contracts of Apprenticeship, Services, Education, etc:*
 (a) A minor can enter into contract of apprenticeship, or for training or instruction in a special art, education, etc.
 (b) These are allowed because it generates benefits to the Minor.
12. **Guarantee for and by minor**
A contract of guarantee in favour of a minor is valid. However, a minor cannot be a surety in a contract of guarantee. This is because, the surety is ultimately liable under a contract of guarantee whereas a minor can never be held personally liable.
13. *Minor as a trade union member*
 Any person who has attained the age of fifteen years may be a member for registered trade union, provided the rules of the trade union allow so. Such a member will enjoy all the rights of a member.

EXCEPTION

- *Contract for the benefit of a minor.*
- *Contract by Guardian*
Benefit of a minor by his guardian or manager of his estate.
 - a. within the scope of the authority of the guardian.
 - b. Is for the benefit of the minor.
- *Contract for supply of Necessaries.*
Example :
 Food, clothes, bed, shelter, shoes, medicines and similar other things required for the maintenance of his life or for the life of his dependents, expenses for instruction in grade or arts; expenses for moral religions or intellectual education, funeral expenses of his deceased family members, marriage expenses of a dependent female member in the family; expenses incurred in the protection of his property or personal liberty, Diwali pooja expenses, etc. have been held by courts to be necessities of life. **However, the things like earrings for a male, spectacles for a blind person or a wild animal cannot be considered as necessities.**
- *Liability for tort: A minor is liable for a tort, i.e., civil wrong committed by him.*
Example :
 A, a 14 – year – old boy drives a car carelessly and injures B. He is liable for the accident i.e., tort.



Person of Unsound Mind

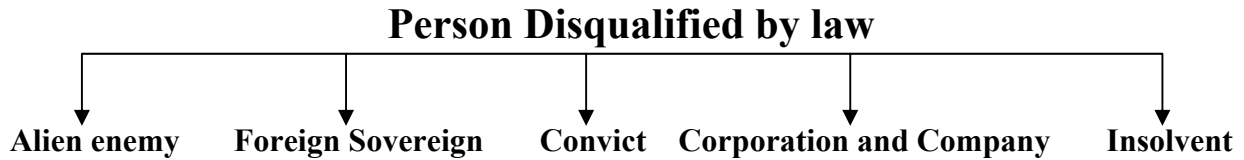
A person who is usually of unsound mind, but occasionally of sound mind can make a contract when he is of sound mind. Similarly, a person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

- ⇒ **At time of entering into a contract, a person must be sound mind.** Law presumes that every person is of sound mind unless otherwise it is proved before court. An agreement by a person of unsound mind is void. The following are categories of a person considered as person of a unsound mind.
- ⇒ **An idiot**
An idiot is a person who is congenital (by birth) unsound mind. His incapacity is permanent and therefore he can never understand contract and make a rational judgment as to its effects upon his interest. Consequently, the agreement of an idiot is absolutely void ab initio. He is not personally liable even for the payment of necessaries of life supplied to him.
- ⇒ **Delirious persons**
A person delirious from fever is also not capable of understanding the nature and implications of an agreement. Therefore, he cannot enter into a contract so long as delirium lasts.
- ⇒ **Hypnotized persons**
Hypnotism produces temporary incapacity till a person is under the effect of artificial induced sleep.
- ⇒ **Mental decay**
There may be mental decay or senile mind the to old age or poor health. When such person is not capable of understanding the contract and its effect upon his interest, he cannot enter into contract.
- ⇒ **Lunatic is not permanently of unsound minded.** He can enter into contract during lucid intervals i.e., during period when he is of sound mind.

Generally of	Occasionally of	Capacity to Contract	Example
Unsound Mind	Sound Mind	Can enter into a Contract when he is of Sound Mind.	A patient in a lunatic asylum, who is at intervals of sound mind, may contract during those intervals.
Sound Mind	Unsound Mind	Cannot make a Contract when he is of Unsound Mind.	A sane man, who is delirious from fever or who is so drunk that he cannot understand terms of a contract or form a judgment, cannot contract

			while such delirium or drunkenness lasts.
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- ⇒ **Drunken person**
An agreement made by intoxicated person is void.



Person Disqualified by Law

- ⇒ **Body corporate or company or corporation**
Contractual capacity of company is determined by object clause of its memorandum of association. Any act done in excess of power given is ultra – virus and hence void.
- ⇒ **Alien enemy**
- An ‘alien’ is a person who is a foreigner to the land. He may be either an ‘alien friend’ or an ‘alien enemy. If the sovereign or state of the alien is at peace with the country of his stay, he is an alien friend. An if a war is declared between the two countries he is termed as an alien enemy.
 - During the war, contract can be entered into with alien enemy with the permission of central government.

(Discuss in class)

- ⇒ **Convict** can’t enter into a contract while he is undergoing imprisonment. But he can enter into a contract with permission of central government while undergoing imprisonment. After the imprisonment is over, he becomes capable of entering into contract. Thus the incapacity is only during the period of sentence.
- ⇒ **Insolvent**
When any person is declared as an insolvent, his property vests in receiver and therefore, he can’t enter into contract relating to his property. Again he becomes capable to enter into contract when he is discharged by court.
- ⇒ **Foreign sovereigns, diplomatic staff and representative of foreign staff** can enter into valid contract. However, a suit cannot be filed against them, in the Indian courts without the prior sanction of the central Government.

Third party to a contract cannot sue or a stranger to a contract cannot sue.

Only those persons, who are parties to a contract, can sue and be sued upon the contract.
This Rule is called **“Doctrine of privities of contract.” Exception.**

- i. **Trust:-** In case of trust a beneficiary can sue upon the contract.
Example:

A transferred certain properties to B to be held by him in trust for the benefit of C. In this case, C although not a party to the trust, can sue for the benefits available to him under the trust.

This exception to the rule of Privity of contract has been recognised in a well known case of *khwaja Mohd. Khan v. Hussaini Begum* (1910) 32 All 410.

- ii. **Family settlement / Marriage contract:-** In case of family settlement members who were not originally party to the contract can also sue upon it.

A female members cone force a provision for marriage expenses made on partition of HUF.

Example:

H sued her father – in – law K to recover Rs.15,000 being arrears of allowance called Pin money payable to her by K under an agreement between K and H's father, consideration being H's marriage to K's son D. Both H and D were minors at the time of marriage. Held, the promise can be made enforceable by H.

Provision of marriage expenses of female members of a Joint Hindu Family, entitles the female member to sue for such expenses on a partition between male members.,

Two brothers, on partition of family joint properties, agreed to invest in equal shares for their mother's maintenance. Held, the mother was entitled to require her sons to make the investment.

- iii. **Acknowledgement of liability:-** Where a person admits his Liability thereafter if he refused be will be stopped from denying his liability.

Example

X receives money from Y for paying it to Z. X admits the receipt of that amount to Z. Z can recover the amount from X, even though the money is due from Y.

- iv. **Assignment of contract.** Assignee (the person to whom benefits of contract are assigned) can enforce upon the contract..

- v. Contract entered into through **an agent.**

- vi. **Covenants** running with land.

Stranger to consideration:- “*Stranger to contract*” must be distinguished from a stranger to consideration need not necessarily be provided by the promises if may flow from a third party also such a person is ‘stranger to consideration.,

(Chinnaya Vs Ramayya).

CONSIDERATION

MEANING

- 1.(a) Consideration is a **quid pro quo i.e something in return** it may be –
 - (i) some benefit right, interest, loss or profit that may accrue to one party or,
 - (ii) some forbearance, detriment, loss or responsibility suffered on undertaken by the other party [currie V mussa]
- (b) **According to Sir Frederick Pollock**, “consideration is the price for which the promise of the other is bought and the promise thus given for value is enforceable.
2. **Definition [Sec 2(d)]**:- when at the desire of the Promisor, the promise or any other person.
 - (a) has done or abstained from doing , or [**Past consideration**]
 - (b) does or abstains from doing, or [**Present consideration**]
 - (c) promises to do or abstain from doing something [**Future consideration**] such act or abstinence or promise is called a consideration for the promise.
3. **Example**
 - (i) ‘P’ agrees to sell his car to ‘Q’ for Rs.50,000 Here ‘Q’s Promise to pay Rs50,000 is the consideration for P’s promise and ‘P’s promise to sell the car is the consideration for ‘Q’s promise to pay Rs.50,000.
 - (ii) ‘A’ promises his debtor ‘B’ not to file a suit against him for one year on ‘A’s agreeing to pay him Rs.10,000 more. Here the abstinence of ‘A’ is the consideration for ‘B’s Promise to pay.

Legal Rules for valid consideration

1. **Consideration must move at the desire of the promisor.**
 D constructed a market at the instance of District collector. Occupants of shops promised to pay D a commission on articles sold through their shops. Held, there was no consideration because money was not spent by Plaintiff at the request of the Defendants, but at instance of a third person viz. the Collector and, thus the contract was void.

Durga Prasad v. Baldeo
2. **Consideration may move from the promisee or any other person who is not a party to the contract. [Chinnaya’s Vs Ramayya]**
 A owed Rs.20,000 to B. A persuaded C to sign a Pro Note in favour of B. C promised B that he would pay the amount. On faith of promise by C, B credited the amount to A’s account. Held, the discharge of A’s account was consideration for C’s promise.

National Bank of Upper India v. Bansidhar
3. **Consideration may be past, present, Future:**
 - Under English law, Past consideration is no consideration.
 - Present consideration :- cash sale

- Future or executory consideration:- A Promises to B to deliver him 100 bags of sugar at a future date . B promise to pay first on delivery.
4. ***Consideration should be real and not illusory. Illusory consideration renders the transaction void*** consideration is not valid if it is.
 - (i) Physically impossible (ii) Legally not permissible
 - (iii) Uncertain (iv) illusory (***fulfillment of a pre existing obligation***)
 5. **Must be legal:-**
Consideration must not be unlawful, immoral or opposed to public policy.
 6. ***consideration need not be adequate. A contract is not void merely because of the fact that the consideration is inadequate.*** The law simply requires that contract should be supported by consideration. So long as consideration exists and it is of some value, courts are not required to consider its adequacy.
Example:
A agreed to sell a watch worth Rs.500 for Rs.20, A's consent to the agreement was freely given. The consideration, though inadequate. Will not affect the validity of the contract. However, the inadequacy of the consideration can be considered in order to know whether the consent of the promisor was free or not .
[Section 25 Explanation II]
 7. ***The performance of an act what one is legally bound to perform is not*** consideration for the contract mean's something other than the promisor's existing obligation –

A contract not supported by consideration is void .

Ex. Nudo Pacto non oritur action, i.e, an agreement without consideration is void.

Ex

ceptions to the Rule “ No consideration . No contract”.

1. ***Written and registered agreements arising out of love and affection:- [25 (1)]***
 - Expressed in writing and registered under law for the time being in force for registration of document
 - Natural love and affection
 - Between parties standing in a near relation to each other**Example:-** An elder brother, on account of natural love and affection, promised to pay the debts of his younger brother. Agreement was put to writing and registered. Held, agreement was valid.

Exception: - *Rajlukhy Dabee Vs Bhootnath Mukharjee*
Example: A Hindu husband by a registered document, after referring to quarrels and disagreements between himself and his wife, promised to pay his wife a sum of money for her maintenance and separate residence. Held that the promise was unenforceable since natural love and affection was missing.
2. ***Promise to compensate [25(2)]***
 - Promise to compensate wholly or in part
 - Who has already voluntarily done something for the promisor

- Something which the promisor was legally compellable to do.

Example:- A finds B's purse and give to him. B Promise to give A Rs.500. This is a valid contract.

3. *Promise to pay a time – barred debt. [Sec 25(3)]*

- A debt barred by limitation con not recovered. Hence, a promise to pay a such a debt is without any consideration.
- Can be enforced only when – in writing and sighed by Debtor or his authorized agent.

Example : A owes B Rs.10,000 but the debt is barred by Limitation Act. A signs a written promise to pay B Rs.8,000 on account of debt. This is a valid contract.

4. *Completed gift-* gift do not require any consideration.

5. *Agency (185)* – According to the Indian contract Act. No consideration is necessary to create an agency.

6. *Bailment (148)-* consideration is not necessary to effect a valid bailment of goods. It is Called Gratuitous Bailment.

7. *Remission (63).*

8. *Charity-* If a person promises to contribute to charity and on this faith the promises undertakes a liability to the extent not exceeding the promised subscription, the contract shall be valid.

FREE CONSENT

According to section 13. Two persons are said to have consented when they agree upon same thing in the same sense.

In English law, this is called '**consensus – ad – idem**'

Effect of absence of consent:

- ⇒ When there is no consent at all, the agreement is **void – ab – initio**.
It is not enforceable at the option of either party

Example 1:-

X have two car one Maruti car and one Honda city car. Y does not know that X has two cars Y offers to buy car at Rs.50,000. Here, there is no identity of mind in respect of the subject matter. Hence there is no consent at all and the agreement is **void – ab – initio**.

Example 2:-

An Illiterate woman signed a gift deed thinking that it was a power of attorney – no consent at all and the agreement was void – ab – initio [**Bala Devi V S. Manumdats**]

Free consent

- ⇒ Consent is said to be free when it is not caused by [**Section 14**]
- (a) coercion [Section 15]
 - (b) Undue influence [Section 16]
 - (c) Fraud [Section 17]
 - (d) Misrepresentation [Section 18]
 - (e) Mistake [Section 20, 21,22]

Effect of absence of Free Consent :- If consent coercion, undue influence, fraud , Misrepresentation the contract is voidable at the option of party whose consent was not free [19, 19A]

Coercion [Section 15]

- (a) Committing any act which is forbidden by the **IPC**
- (b) Threatening to commit any act which is forbidden by the **IPC**.
- (c) Unlawful detaining of any property or
- (d) Threatening to detain any property.

Essential elements of coercion

Above four [a – d]

- (e) coercion need not necessary proceed from party to contract.
- (f) Coercion need not necessary be directed against the other contracting party.
- (g) It is immaterial whether the IPC is or is not in force at the time or at the place where the coercion is employed [**Bay of Bengal caption**]

Effect of threat to file a suit:- A threat to file a suit (**whether civil or court**) does not amount to coercion unless the suit is on false charge. Threat to file a suit on false charge is an act forbidden by the **IPC** and thus will amount to an act of coercion.

Effect of Threat to commit suicide:- Threat to commit suicide amounted to coercion and the release deed was example discussed in class.

Therefore voidable. [Chikham Ammiraju v seshama]

Duress V Coercion

English Law - Duress does not include detaining of property or threat to detain property.
- Duress can be employed only by a party to the contract or his agent.

Effect:- when coercion is employed to obtain the consent of a party the contract is voidable at the option of the party where consent was obtained by coercion.

A threat to strike by employees in support of their demands is not regarded as coercion. This is because the threat to strike is not an offence under the I.P.C. it is a right given under the Industrial Disputes Act.

Detaining property under mortgage: Detention of property by a mortgage until the payment of loan does not amount to coercion.

Undue influence [Section 16]

Meaning of undue influence :- dominating the will of the other person to obtain an unfair advantages over the others.

- (a) where the relation subsisting between the parties must be such that one party is in **position to dominate the will** of the other.
- (b) The dominant party **use** his position.
- (c) Obtain an **unfair advantage** over the other .

Presumption of domination of will:-

Circumstances	Examples
Where he holds a real or apparent authority over the other	Master and servant, parent and child, Income Tax officer and assesses principal and a Temporary Teacher.
Where he stands in a Trust fiduciary (benefit) relation to the other	Trustee and beneficiary spiritual Guru and his disciples, solicitors and clients. Guardian and wards
Mental Capacity of a person is temporarily or permanent effected by reason of age, illness or mental or bodily distress	Relationship between medical attendant and ward.

Example :-

A Poor Hindu widow agreed to pay interest at 100% P. a because she need the money to established her right of maintenance. It was held that the lender was in position to dominate the will of widow.

No. Presumption of Domination of will:-

- Landlord and Tenant
- Creditor and Debtor
- Husband and wife (**other than Pardanashin**)
- Principal and Agent

Effect of undue Influence:-[Section 19A]

When consent to an agreement is caused by undue influence, the contract is voidable at the option of the party whose consent was so caused.

Burden of Proof:- A contract is presumed to be induced by undue influence if the following two condition:-

- A party has the position to dominate the will of the others
- The transaction is unconscionable (unreasonable)

In such a case dominant party is under the burden to prove the undue influence was not employed.

[Unconscionable transactions:- if transaction appears to unreasonable the dominant party to prove that there is no undue influence.]

- **Any other transaction:-** weaker party to prove the influence was employed]

Where some transaction is entered into in the ordinary course of business, but due to certain contingencies, one party is able to make the other party agree to certain terms and conditions then it is not undue influence.

Example :

A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence.

Example :

A spiritual guru induced his chela to donate all his property to the ashram and said that in return of it, he will certainly get salvation. The chela did the same. Held, that this is a case, of undue influence so it becomes void.

Contract with Pardanashin woman;-

Induced by undue influence

Burden of Proof – Full disclosure is made to pardanashin women

Pardanashin Women - Understand the contract

- Receipt of competent independent advice .

Rebutting presumption:-

- Dominant party – full disclosure
- Price was adequate
- Receipt of competent independent advice before entering into contract – weaker party.

Undue influence Vs Coercion

Similarities: - Voidable at the option of aggrieved party:-

Coercion (15)	Undue Influence (16)
Meaning – using or threat to use physical force - obtain the consent of party (intention) - Punishment under IPC - Parties – Stranger - Relationship – Immaterial - Voidable at the option of aggrieved party - Benefit - Back	- Involves use of moral force (mental pressure) - Obtain an unfair advantage (intention) - Not criminally liable - Between the parties to the contract - One party dominate the other party - Voidable or court set aside - Benefit – order of court – Back

Fraud (17)

- ⇒ The term fraud means a false representation of facts made willfully *with a view to deceive the other party*.
- ⇒ **Sec.17-** fraud means any act committed by a party to a contract or with his connivance or by his agent with intent to deceive another party there to or his agent or to induce to enter into contract.

Essentials of fraud :-

- (a) By a party to the contract
- (b) There must be representation – [an opinion a statement of expression – does not fraud].
- (c) The representation must be false.
- (d) Before conclusion of contract.
- (e) The misrepresentation must be made willfully.
- (f) The misrepresentation must be made with a view to deceive the other party.
- (g) The other party must have actually been deceived.
- (h) The other party have suffered a loss.

Fraud – definition include

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

⇒ *The active concealment of a fact by one having knowledge or belief of the fact.*

Ex. A furniture dealer conceals the cracks in furniture by polish work.

⇒ *A promise made without any intention of performing it.*

⇒ *Any other act fitted to deceive.*

⇒ Any such act or omission as the law specially declared to be fraudulent.

Ex:- T bought a cannon from H. It was defective, but H had plugged it. T did not examine the cannon, but it burst when he used it. Held as the plug had not deceived T, he was liable to pay for the cannon.

Ex.: Where the representation was true at the time of when it was made but becomes untrue before the contract is entered into and this fact is known to the party who made the representation. If must be corrected. If it is not so corrected it will amount to be fraud.

When the silence amount to fraud:-

(a) **General rule:-** Mere (only) Silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud.

EXCEPTION

where the circumstances of the case are such that regarding being had to them. It is duty of the person keeping silence to speak. Such duty arises in the following two cases.

(1) ***Duty to speak exists where the parties stand in a fiduciary relationship***, e.g. father and son, guardian and ward, trustee and beneficiary etc. or where contract is a contract of *ubberima fidei* (requiring utmost good faith), e.g. contracts of insurance.

Ex.:- A sells by auction to B a horse which A knows to be unsound. B' is A's daughter and has just come of age. Here the relation between the parties would make it A's duty to tell B is the horse is unsound.

(2) ***When silence itself equivalent to speech***. B says to A " if you do not deny it I shall assume that the horse is sound". A say nothing – A's silence equivalent to speech. A can held liable to fraud.

[Half Truth is worse than a blatant: - Example – company pay dividend – in class room]

Effect of Fraud:-

Sec. 19: A contract induced by fraud is voidable at the option of the party defrauded. Till the exercise of such option, the Contract is valid.

1. Rescinds of contract
2. Right to insist upon performance
3. Right to claim damages – if he suffered loss.

Exception : The contract is not voidable in the following cases.

- When the party who consent was caused by silence amount to fraud and he has the means of discovering the truth with ordinary diligence. [Ex class room]
- When the party give the consent in ignorance of fraud.
- When the party after become aware of fraud takes a benefit.
- When the parties can't be restored to their original position.
- Where interests of third parties intervene before the contract is avoided.

Misrepresentation (section 18)

Misrepresentation is when a party (person) asserts something which is not true though he believes is to be true. In other words misrepresentation is a falls representation made innocently. An agreement is said to be influenced by misrepresentation if all the following conditions are satisfied.

- (a) The party makes a representation of a fact [**The representation by a stranger (By anyone with his connivance or by agent)**] to the contract does not affect the validity of the contract.
- (b) The misrepresentation was made *innocently* i.e. if was not made with a view to deceive the other party.
- (c) The other party has actually acted believing the misrepresent to be true.

Misrepresentation include:-

- Unjustified statement of facts – positive assertion – Believe true really not true no basis misrepresentation
- Breach of duty.
- Inducing other to make mistake as to qualify or nature of subject matter.

Effect of Misrepresentation:-

(1) Right to Rescind contract:-

Can't do

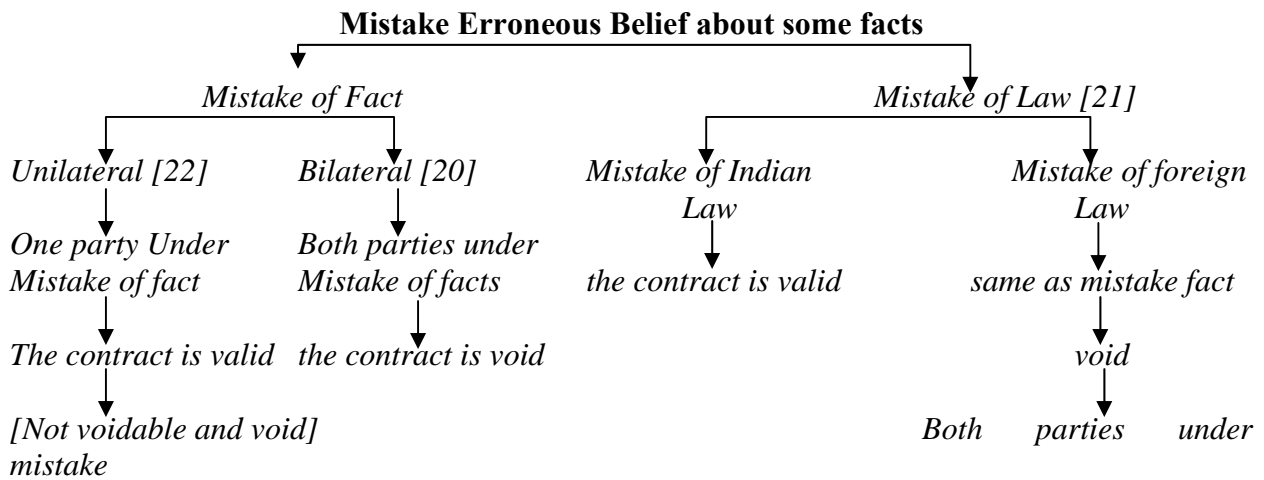
- Discovering the truth with ordinary diligence.
- Give consent in ignorance of misrepresentation
- Become aware of misrepresentation takes a benefit
- Where an innocent third party before the contract is rescinds acquires consideration some interest in the property passing under the contract.
- Where the parties can't be restored to their original position.

(2) Right to insist upon performance.

Ex.:- Unlike Fraud he cannot sue for damage.

Fraud (17)	Misrepresentation (18)
<p>Meaning :- wrongful representation is made Willfully to deceive the party.</p> <p style="text-align: center;"><u>Knowledge of falsehood.</u></p> <ul style="list-style-type: none"> - The person making the wrong statement does not believe it to be true. - Right to claim damage <p style="text-align: center;"><u>Means of discovering of truth</u></p> <ul style="list-style-type: none"> - In case of fraud the contract is voidable even though the aggrieved party had the means of discovering the truth with ordinary diligence. <p>Exception :- Silence</p>	<p>Meaning - innocently without any intention to Deceive the other party.</p> <ul style="list-style-type: none"> - The person making the wrong statement believes it to be true. - Can't claim damage - In case of misrepresentation the contract is not voidable if the aggrieved party had the means of discovering the truth with ordinary diligence....

MISTAKE



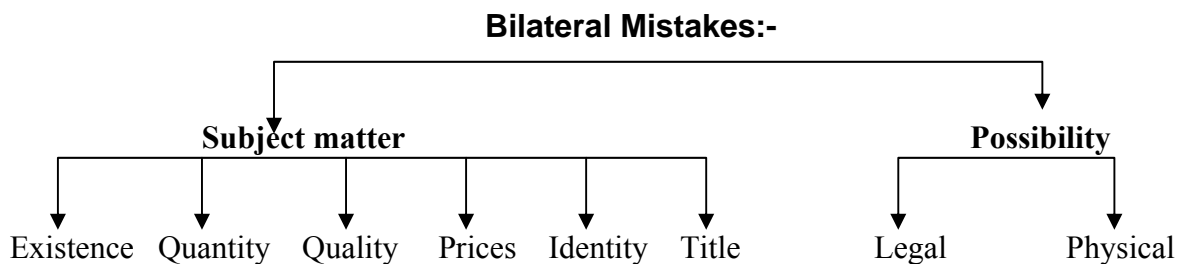
Exception: - Where contract is not valid (void)

1. Identity of persons contract with

Ex. :- A woman, falsely misrepresenting herself to be wife of a well known Baron obtained two pearl necklaces from a firm of jewelers on the pretext of showing them to her husband before buying. She pledged them with a broker who took them in good faith. Held that there was no contract between jeweler and woman and even an innocent buyer or a broker did not get a good title. Broker must return necklaces to jeweler. Jeweler intended to deal not with her but with quite a different person, i.e., wife of a Baron.

2. as the nature of the contract

Ex.:- illiterate man sign Bill of exchanges by means of false, representation that it was a mere guarantee. It was held that he was not liable for bill of exchange because never intended to sign the bill of exchange



EVERY AGREEMENT OF WHICH THE OBJECT OR CONSIDERATION IS UNLAWFUL IS VOID [SEC 23]

(a) **It is forbidden by law** – law would also include the rules regulations, notifications etc. under or issued under the authority given by a statute.

Ex.:- A sold liquor without license to B. The sale is unlawful as the sale of liquor without license is forbidden by the law, i.e., The Excise Act. Hence, A cannot recover the price.

Ex.:- a Hindu already married and his wife alive entered into a marriage agreement with Y an unmarried girl. The agreement is void because the second marriage is forbidden by Hindu Law.

(b) **If it defeats the Provisions of any Law.**

- not directly prohibited by any Law

Ex.:- A's estate is sold for arrears of revenue under the provision defaulter is prohibited from purchasing the state upon an understanding with A becomes the purchaser and agrees to convey the estate to A. Upon receiving from him the price which B has paid. The agreement is void.

(c) **If it is Fraudulent**

Ex.: Object or consideration of an agreement is fraudulent. An agreement with such an object or consideration is unlawful and void.

(d) **If it involves or Implies injury to a person or property of another.**

Ex. :- Where it create injury to a person or to the property of another. An agreement with such an object or consideration is unlawful and void.

(e) **If the court regards it as immoral.**

⇒ X gave Rs. 10,000 to Y a married woman to obtain a divorce from her husband. X agrees to marry when divorce taken. X would not recover the amt.

1. **Partially unlawful Object or consideration [Sec. 24]:** An Agreement is void if -

- (a) any part of a single consideration for one or more objects is unlawful; or
- (b) any one or any part of one of several consideration for a single object, is unlawful.

2. **Example:** B is a licensed manufacturer of permitted chemicals. A promise B to supervise B's business and combine it with the production of some contraband items together with the permitted items. B promises to pay A, Salary of Rs.10,000 p.m. Agreement is void, object of A's promise and consideration for B's promise being partially unlawful.

3. **Lawful Consideration enforceable:** When there are several distinct promises made for one and the same consideration and one or more of them are of such nature that law will not enforce it, only such of the promises as are unlawful cannot be enforced. Other which are lawful, can be enforced.

4. **Test of Severability:**

- (a) If illegal part cannot be severed from legal part of a covenant, contract is altogether void.

- (b) If it is possible to sever them, whether the illegality be due to Statute or Common Law, bad part alone may be rejected and good retained.

In case of pre – existing civil liability, the dropping of criminal proceedings need not necessarily be a consideration for the agreement to satisfy that liability.

Union Carbide Corpn. v. UOI

Illegal agreement – Void – ab – intio

- Punishable by the criminal Law of the country or by any special legislation regulation effect of illegal agreement.
- Collateral transactions – illegal
- No action can be taken for the recovery of money paid or property transferred.
- If illegal part **can’t be separated** from the legal part.
Whole agreement is altogether illegal. [Sec.57]
- **If separated**
- Legal part – enforces illegal part – reject.
- Reciprocal promises – In respect of reciprocal promises the agreement as to illegal promise is void.

Agreement opposed to public policy:-

Alternative promises: where in alternative promises one part is illegal, only the legal part can be enforced. [Sec. 58]

Champferty & Maintenance : (Refer Class Note)

VOID AGREEMENT

2(g)- *Void agreement is an agreement which is not enforceable by Law – void – ab – inito.*

- (1) Agreement by or with person's incompetent to contract [10, 11]
- (2) Agreement entered into through a mutual mistake [20]
- (3) Object or consideration – unlawful [23]
- (4) Consideration or object partially, unlawful [24]
- (5) Without consideration [25]
- (6) Restraint of marriage [26]
- (7) Restraint of trade [27]
- (8) Legal proceeding [28]
- (9) Consideration identified [29]
- (10) Wagering agreement [30]
- (11) Impossible agreement [56]
- (12) An agreement to enter into an agreement in the future.

Agreement in Restraint of marriage [26]

Every agreement in restraint of marriage of any person **other than a minor**, is void, Any restraint of marriage whether total or partial is opposed to public policy.

- Ex.** A promised to marry else except Mr. B, and in default pay her a sum of Rs.1,00,000. A married someone else and B sued A for recovery of the sum. Held, the contract was in restraint of marriage, and as such void.
- Ex.** The consideration under a Sale Deed was for marriage expenses of a minor girl aged 12. Held the sale was a void transaction being opposed to public policy.
- Ex.** Two co-widows – agreement – is one of them remarried – she shout forfeit her eight to her share in the deceased husband's property was not void because no restraint was imposed upon either of the two widows from remarrying.
- Ex.** Wife to divorce herself and to claim maintenance from the husband on his marrying a second wife was not void because no restraint was impose upon husband from marrying a second wife.

Agreement in Restrain of trade [27]

Every agreement by which anyone is restrained from exercised a Lawful profession, trade or business of any kind is void .

Burden for Proof :-

Party supporting the contract:- must show that the restraint is reasonably necessary to protect public interest. Party challenging the contract:- restraints is injurious to the public.

- Ex. :** In Patna, 29 out of 30 manufacturers of combs agreed with R to supply combs only to him and not to anyone else. Under the agreements R was free to reject the goods if he found no market for them. Held, the agreement amounted to restraint of trade and void.

Exception to Sec. 27

- (1) **Sale of goodwill:** - Seller of goodwill of a business may agree with the buyer to restrain from carrying on business.
- (a) *Must relate to same business*
 - (b) *Restriction shall apply within specified Local limits.*
 - (c) *Restriction shall apply within a reasonable time period*
 - (d) *The specified local limits – depends on nature of business.*
- (a) **Restriction on existing partner [11(2)]**
- Not carry on business other than business of the firm till he is partner.
- (b) **Restriction on outgoing partner [36]**
- Not carry on a similar business after retirement
 - Local limits + specified period – local limit – nature of business
- (c) **Sec. 54:** Upon or in anticipation of dissolution of Firm. Partners may agree that some or all of them will not carry on business similar to that of the Firm within specified periods or local limits.
- (d) **Sec. 55(2) :** Partner may agree with due buyers of Goodwill, not to use the Firm name or carry on Firm's business or solicit clients of the Firm.
- (e) **Sec. 55(3):** Upon sale of Firm's Goodwill, a partner may agree that he will not carry on any business similar to Firm's within specified periods or local limits.

Exception under judicial interpretations :-

- (a) **Trade combination.**
- Traders may form associations among them to regulate the business or to fix prices.
 - Such agreement like opening and closing of business venture, licensing of traders, supervision and control of dealers, etc. are valid even if they are in restraint of trade.
 - But, a Combination that tends to create monopoly; or when two enter into an agreement to avoid competition, they are against public policy and hence void.
- (b) **Sale dealing agreement:** - Agreements to deal in the products of a single manufacturer or to sell the whole produce to a single dealer are valid if their terms are reasonable.
Ex.: **(Discuss in class)**

Agreement – buyer of goods for Delhi market not to sell them in Chennai is valid.
- Not to sell any other firm – valid.

- (c) **Service agreement.**
- **Agreement:** Employers may enter into agreements with employees – (i) not to engage in other work during the tenure of his employment; or (ii) not to engage in similar work after his termination.
 - **During Employment:** The first restraint is always valid, e.g. doctors may be paid non practicing allowances to avoid practicing when they are employed in a hospital.
 - **After termination of service:** The second restraint is valid only if it is to protect the trade interests or the employer. It may be imposed to prevent the outgoing

employee from using trade secrets he had learnt during his tenure, to the detriment of his previous employer.

- **Valid Agreements :** Requiring employees to serve the organization for a few years after training leaving; or execution of a bond requiring employees leaving the organization to pay compensation to the employer are valid.
- **Use of Personal Skills:** The employer cannot prevent the employees from using his personal skills and knowledge to his benefit; e.g. an employer cannot restrain an employee to act in theatre plays or in performing an art.

Agreement in Restraint of legal proceedings [28]

⇒ **Agreement restricting enforcement of rights:**

- An agreement by which any party is restricted **absolutely** from enforcing his legal rights under any contract is void.
- Agreements Limiting period of limitation:- An agreement which limits the time within which an action may be brought is void.
- **A partial restrain is not void, eg.**

Ex. 1: A clause in a contract that any dispute arising between the parties shall be subject to jurisdiction of a court at a particular place only, is valid.

Ex. 2: An agreement is not void merely because it provides that any dispute arising between two or more persons shall be referred to arbitration.

- That has arisen.
- Which may arise
- Which has already arisen?

Ex. 3: An agreement not to go in appeal to higher court against the judgment of a lower court does not amount to restraint of legal proceedings.

An agreement the meaning of which is not certain (Sec 29):

1. An agreement is called an uncertain agreement when the meaning of *that agreement is not certain or capable of being certain*. Such agreements are declared **void** u/s 29.
2. **Areas of uncertainty:** Uncertainty may relate to – (a) Subject Matter of Contract; or (b) Terms of contract.
 - (a) Subject Matter: There may be uncertainty as regards – (i) existence; (ii) quantity (iii) quality; (iv) price; or (v) title to the subject matter.
 - (b) Terms of Contract: There may be uncertainty as regards – (i) existence (ii) quality; (iv) price; or (v) title and other terms in the contract.

Example:

1. A says to B “I shall sell my house; will you buy?” A says, “Yes, I shall buy”. Due to uncertainty of price, the agreement is void and unenforceable. There is no binding contract.
2. A agreed to pay a certain sum, when he was able to pay. Held, the agreement was void for uncertainty.
3. D agrees to sell his white horse, for Rs.5,000 or Rs.10,000.

WAGERING AGREEMENT [30] :-

An agreement between two persons under which money or money's worth is payable by one person to another on the happen or non happening of a future uncertain event is called a wagering agreement.

- X promise to pay Rs. 1000 to Y if it is rained on a particular day, and Y promise to pay Rs.1000 to X if it did not.
- Wagering agreement is promise to give money or money's worth upon the determination of uncertain event.- **Sir Willian Anson.**

Essential elements of wagering agreements

- (1) *The must be a promise to pay money or money's worth*
- (2) *Performance of a promise must depend upon determination of uncertain event. It might have already happened but the parties are not aware about it.*
- (3) *Mutual chancels of Gains or Loss.*
- (4) *Neither party to have control over the events*
- (5) *Neither party should have any other interest in event.*
- (6) *One party is to win and one party is to lose.*

Ex. 1:- Agreement to settle the difference between the contract price and market price of certain goods or shares on a particular day.

Ex. 2: A lottery is wagering agreement. Therefore, an agreement to buy and sell lottery tickets is a wagering agreement. Section 294 – A of the Indian Penal Code declares that drawing of lottery is an offence. However, the government may authorize lotteries. The persons authorized to conduct lotteries are exempt from the punishment. But, the lotteries still remain a wagering transaction.

Ex. 3: However, if the crossword puzzle prizes depend upon sameness of the competitor's solution with a previously prepared solution kept with the organizer or newspaper editor, is a lottery and, therefore, a wagering transaction.

Ex. 4: However, when any transaction in any commodity or in shares with an intention of paying or getting difference in price, the agreement is a wager.

Agreement not held as wagers:-

- ⇒ *Prize in terms of Prize competition Act, 1955 not exceeding Rs.1000 is not wagering agreement.*
- ⇒ *Horse race [500] – An agreement to contribute a plate or prize.*

- ⇒ **Contract of insurance utmost in good faith eg. Favour in public policy.**
- ⇒ **Share market transaction** A commercial transaction should always be distinguished from a pure speculative transaction. A commercial transaction is done **with an intention of delivery of goods (commodity or security)** and payment of price. Therefore, it is not wagering agreement.
- ⇒ **Crossword competition involving skill for its solution.** If skill plays an important role in the result of a competition and prize depend upon the result, the competition is not involve applications of skill and prizes are awarded to the participants on the basis of merit of their solutions and not on chance. Therefore, such competitions are valid and are not wagers.
- ⇒ **Athletic Competitions also fall in the category of games of skill. Therefore, these are also not wagers.**

Example: A and B, two wrestlers, agreed to enter into a wrestling contest in Ahmedabad on a certain day. They further agreed that a party failing to appear on the fixed day was to forfeit Rs.500 and the winning party will receive a sum of Rs.1,000. Held, it was not a wagering agreement.

- ⇒ **Contribution to chit fund is not wager – contributions made by the members are refunded by draw of lots.**

Effects of wagering agreements:-

- ⇒ Agreement is void.
- ⇒ No suit can be filed for any recovery of the amount won on any wager.
- ⇒ It is not illegal. Any agreement collateral to wagering agreement is valid.
- ⇒ However, it is **illegal in state of Maharashtra and Gujarat.**

ILLEGAL AGREEMENT

- ⇒ Agreement which is prohibited by law is illegal agreement.
Example Agreement to commit crime.
- ⇒ Effects of illegal agreement:
 - It is always void.
 - Any collateral transaction to illegal agreement is also void.
 - No action is allowed on illegal agreement.

	Void Agreement	Illegal agreement
Meaning	Not enforceable by Law	Forbidden by any law
One in another	All void agreement is not illegal	All illegal agreement are void
Reason	10,29,56	Against the provisions of law
Punishment	Not liable to punished	Party are criminally liable
Void – ab – initio	A valid – collateral – is not void	Illegal, collateral – illegal

CONTINGENT CONTRACT

MEANING

A 'contingent contract' is a contract, to do or not to do something. If some event, collateral to such contract does or does not happen

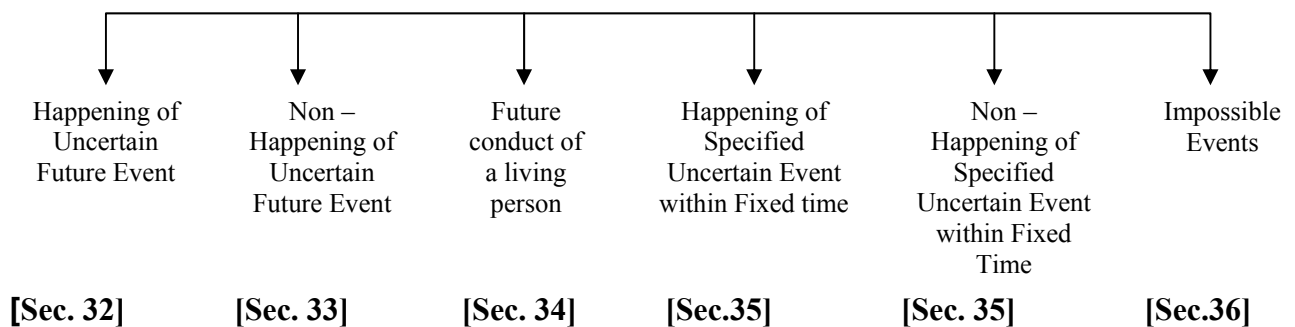
- ⇒ A contract to pay B Rs.10,000 if B house is burnt.
- ⇒ A promise to pay B Rs.1,00,000 if a certain, ship does not return within a year.

Essential features of a contingent contract :-

- (a) *It is a contract to do or not to do something*
- (b) *Dependent on happening or non happening of an event*
- (c) *Such on event is a collateral event (i.e. it is collateral) to the contract i.e. the event must not depend upon the mere will of party.*
- (d) *The event is uncertain*

Rules regarding contingent contract.

CONTINGENT UPON



(1) **Contracts contingent upon the happening of an event enforced – such event has happened [32]**

Void – such event because impossible [happening of such event]

Ex.:- A contract to pay B a sum of money when B marries e dies without being married to B contract – void

(2) **Non happening of a future event:- [33]**

Enforced :- when the happening of such events becomes impossible.

Void:- such event has happened.

Ex.:- A agrees to pay B sum of money if a certain ship does not return. This ship is sunk. The contract can be enforced when the ship sinks.

(3) Happening of an event within a specified time [35]

Enforce :- when such event has happened within the specific time.

Void :- When the happening of such event because impossible before the expiry of specified time.

When such event has not happened within specified time.

A promise to pay B sum of money if a certain ship return within a Year.

Enforce :- ship returns within the year .

Void :- If the ship is burnt within the year / not come within the year.

(4) Non – happening of an event within a fixed time [35]

Enforce :- When the happening of such event because impossible before the expiry of specified time.

⇒ When such event has not happened within the specified .

Void:- When such event has happened within the specified period.

(5) Future conduct of a living person. [34]

Enforced:- When such person acts in the manner as desired in the contract.

Void :- When such person does anything which makes the desired future conduct of such person – impossible – dependent upon certain contingency.

- A agrees to pay B a sum of money if B marries C . C married D. The marriage of B to C must now considered impossible, although it is possible that D may die any that C may afterwards marry B.

(6) Impossible events [36]

- Such an agreement can not be enforced since it is void whether the impossibility of the event was known to the parties or not is immaterial.

- A agrees to pay B Rs.1,000 if two parallel straight lines should enclose a space. Agreements are void.
- A agrees to pay B Rs.1,000 if B will marry A's daughter C and C was dead at the time of the agreement. Agreement is void.

	Wagering agreement	Contingent agreement
1. Defined	Not defined u/s 30	Defined o/s 31
2. Meaning	Promise to give money or money's with upon the determinative of an uncertain event.	To do or not to do something if some event. Collateral to such contract does or does not happen
3. Nature of uncertain event	Contingent nature	Not be a wagering nature
4. Void / valid.	Void	Valid
5. Interest	No other interest in the subject matter of the agreement except within of loss of wagering amt. A wagering agreement is essentially of a contingent nature. Consists of reciprocal promises futures event is the sole determine factor	Have real interest outcome of the uncertain gain. A contingent contract the not be a wagering nature. Not consist a reciprocal promises future event is fully collateral.

PERFORMANCE

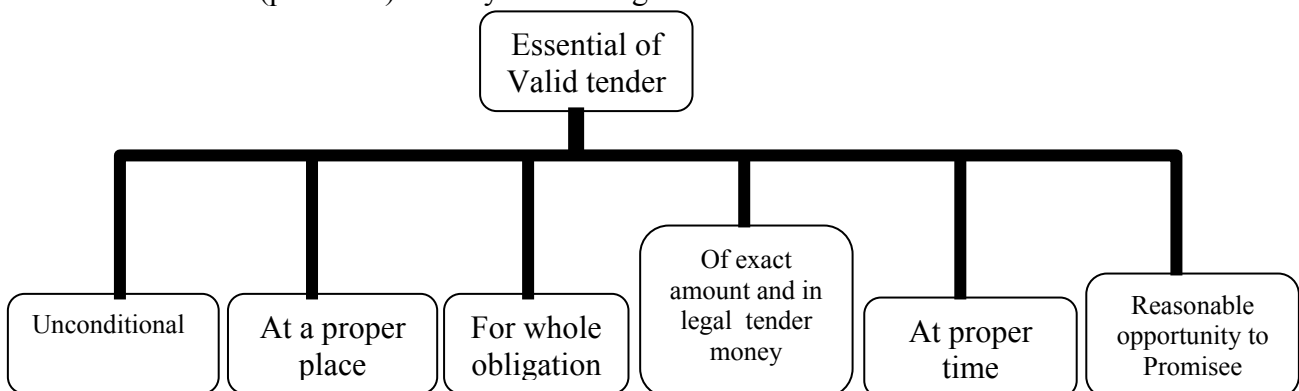
Sec 37:- That the parties to a contract *must either perform or offer to perform*, their respective promises unless such performance is *dispensed with or excused* under the provisions of *contract Act, or of any other law*.

Performance: - Two types

1. **Actual performance** – actually performed – liability of such a party comes to an end.
2. **Attempted performance or tender of performance refusal to accept offer of performance by promise [38]**

Promisor $\frac{\text{Offer}}{\text{of performance}}$ promisee $\frac{\text{Does not}}{\text{accept}}$ attempted performance

Promisor is not responsible for non performance and they can sue the promisee for breach of **contract** – nor he (promisor) thereby lose his rights under the contract.



A. Tender or offer of performance to be valid must satisfy the following conditions:-

- (i) It must be unconditional
Ex :- 'X' offers to 'Y' the principal amount of the loan. This is not a valid tender since the whole amount of principal and interest is not offered.
- (ii) It must be made at a proper time and place.
Ex:- If the promisor wants to deliver the goods at 1 am. This is not a valid tender unless it was so agreed;
- (iii) Reasonable opportunity to examine goods.
Ex:- Delivery of something to the promise by the promisor promise must have reasonable opportunity of inspection.
- (iv) It must be for the whole obligation :- goods and amount.
Ex:- 'X' a debtor, offer's to pay 'Y' the debt due in installments and tenders the first installment. This is not a valid tender minor deviation – not invalid [Behari Lal v ram gulam]
- (v) It must be made to the promise or his duty authorized agent.
Ex:- It must be person who is willing to person his part of performance.
- (vi) In case of payment of money, tender must be of the exact amount due and it must be in the legal tender.

Type of Tender

❖ Tender of goods and services

When a promisor offers to delivery of goods or service to the promisee, it is said to be tender of goods or services, if promisee does not accept a valid tender, **It has the following effects:**

- (i) The promisor is **not responsible** for non – performance of the contract.
- (ii) The promisor is **discharged from his obligation** under the contract. Therefore, he need not offer again.
- (iii) **He does not lose his right** under the contract. Therefore, he can sue the promisee.

❖ Tender of money

Tender of money is an offer to make payment. In case a valid tender of money is not accepted, it will have **the following effects:**

- (i) The offeror is not discharged from his obligation to pay the amount.
- (ii) The offeror is discharged from his liability for **payment of interest** from the date of the tender of money.

Effect of refusal of party to perform promise Wholly Sec 39.

Promisor – Refuse – Promise – wholly

Promisee can put – can end of the contract or – he can continue the contract if he has given his consent either by words or – by conducts in its continuance.

Result – claim damages. [compensation]

Ex:-

(Refer Class Notes)

Who can demand performance?

1. Promisee – stranger can't demand performance of the contract.
2. Legal Representative – legal representative can demand Exception performance.
 - contrary intention appears from the contract
 - contract is of a personal nature.
3. Third party – *Exception to “stranger to a contract”*

Person by whom promise is to be performed Sec 40.

[who will perform the contract]

1. **Promisor himself :-** include personal skill, taste or art work.

Ex:- ‘A’ promises to paint a picture for ‘B’ as this promise involves personal skill of ‘A’. If must be performed by ‘A’.

2. **Promisor or agent :-** [does not involves personal skill]

3. **Legal Representative [does not involve personal skill and taste]**

4. Third person [Sec 41] :- Acceptance of promise from the third party:-

If the promisor accepts performance of a contract by a third party, he can't afterwards enforce the performance against the promisor although the promisor had neither authorized nor ratified the act of the third party.

[In other meaning once the promisee accepts the performance from a third person, he cannot compel the promisor to perform the contract again]

Performance of Joint Promises:-

Two or more persons make a promise

- **Performed by all the joint promisor [42]**
- All the joint promisor – liable
- Thus in India the liability of joint promisors is joint as well as several.

In England, however the liability of the joint promisors is only joint and not several and accordingly all the joint promisors must be sued jointly.

- **Liability of joint promisor [43]**

1. **Liability** – joint as well as several [unless express A + B + C 900 D. D may compel either A, B or C or any of two of them or all of them.
2. Where a joint promisor has been compelled to perform the whole promise, he may compel every other joint promisor to contribute equally with himself to the performance of the promise (unless a contrary intention appears from the contract).

$$C - 9000 - D \qquad \qquad \qquad A \quad + \quad B \quad - \quad C$$

$$\qquad \qquad \qquad 3000 \qquad \qquad \qquad 3000$$

3. If any one of the joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares

$$A + B + C - 9000 \qquad \qquad \qquad (A) - \text{Insolvent}$$

$$\qquad \qquad \qquad B + C = 4500 + 4500 = 9000$$

Sec 44:- Release of one joint promisor :- where one of the joint promisors is released other joint promisors shall continue to be liable.

[In English law if one joint promisor – discharge then all the joint promisors discharge]

Sec 45:- Rights to claim performance of joint [Devolution of joint rights]

1. During their joint lives – all the joint promisors .
2. After the death of any of them – The representative of such deceased promise jointly with the surviving promise
3. With the representatives of all jointly.

Ex:- 'A' in consideration of Rs 50,000 lent to him by 'B' and 'C' promises 'B' and 'C' jointly to repay that sum with interest on a day specifies.

 - 'B' dies. The right to claim performance rests with 'B' representatives jointly with 'C' during 'C' life.
 - And after 'C's' death with the representatives of 'B' and 'C' jointly .

Time place and manner of performance [46 – 50]

1. No time is specified for performance [Sec 46]

- Time of performance is not specified + promisor agreed to perform without, a demand from the promisee the performance must be made within a reasonable time. Reasonable time – in each particular case – a **question of fact**.

2. Time specified but hour not mentioned [47].

Time of performance specified + promisor agreed to perform without application by the promisee

- Performance must be performed on the day fixed during the usual business hours and at the place at which the promise ought to be performed.

3. Where Time is fixed and application to be made [48]

- Proper place and within the usual hour of business
- Promisee to apply for performance

4. Performance of promise where no place is specified and no application is to be made by the promisee [49]

- It is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance and perform it at such appointed place.

5. Performance in manner or at time prescribed or sanctioned by promisee [50]

- In such prescribed manner and
- Prescribed time

Ex:- 'A' desires 'B' who owes him Rs 10,000 to send him a promissory note for Rs 10,000 by Post. The debt is discharged as soon as 'B' puts into the post a letter containing the promissory note duly addressed to 'A'.

Performance of reciprocal promises

Reciprocal Promise :- Promises which form the consideration or part of consideration for each other as called reciprocal promises.

1. Mutual and Independent:-

Such promises all to be performed by each party independently without waiting for the other party to perform his promise can't excuse himself on the ground of non-performance by the default party.

X $\frac{\text{deliver}}{\text{the goods}}$ Y $\frac{\text{on}}{10\text{th may}}$ Y $\frac{\text{Paying}}{\text{the price}}$ 6th may

Y – Price – non Payment

X – goods delivered

2. Mutual and Dependent:-

Sue damage . The performance of promise by one party depended on the prior performance of the promise by other party.

[The party at fault becomes liable to pay compensation to the other party may sustain by the non performance of the contract – [54]

3. Mutual and concurrent: -

when reciprocal promises are to be performed simultaneously a promisor need not perform his part unless the promisee is ready and willing to perform [51]

$$A \frac{\text{deliver}}{\text{the goods}} B \frac{\text{Pay}}{\text{The Price}}$$

Order of performance of reciprocal promises [52]

- Where the order in which reciprocal promises one to be performed is expressly fixed by the contract – they must be performed in that order.
- Order is not expressly fixed – nature of transaction requires
Ex :- ‘A’ and ‘B’ contract that ‘A’ shall build a house for ‘B’ at a fixed price ‘A’ promise to build the house must be performed before its promise to pay for it.

Sec 53 :- One party preventing – voidable at the option of the other party so prevented.
- Compensation for loss

Sec 54 :- Legal and illegal
Legal – valid, illegal – void

Sec 58:- alternative promise, one branch being illegal legal branch alone can be enforced.
A – B – 1000 rupees
Deliver – rice + smuggled goods

Time as the essence of the contract (Sec 55):-

Where time is essence – the concerned parties must perform their respective promises within the specified time.

Time are fact :- time is specified for the performance of the contract is not by itself sufficient to prove that time is essence of the contract.
- Intention of the parties.

Time is generally considered to be the essence of the contract :-

- (a) where the parties have expressly agreed to treat as the essence of the contract.
- (b) Delay operates as an injury to the party and
- (c) Nature and necessities of the contracts requires it to be performs within the specified time.
 - Delivery of the goods – considered – essence of the contract payment of the price – No

[However in case of sale and purchase of an immoral property, the time is presumed to not the essence of the contract]

Time is essence of the contract – party tails to perform

- In time – the contract becomes **voidable** at the option the other party.

Time is not essence – only claim damages for delay in performance

Assignment of contract :- (a) by – operation of law
 - Death
 - Insolvency
 (b) By an act of parties

Assignment is a made of transferring rights.

Assignment $\frac{\text{transfer rights}}{\text{and int erest}}$ another person

Rules regarding assignment

- (a) The liabilities or obligations under a contract can't be assigned
- (b) The rights and benefits under a contract which not of a personal nature can be assigned.
- (c) *An actionable claim can always be assigned*

	Succession	Assignment
Meaning	Deceased person - Legal represent	Person – another person
Time	On the death of a person	During the life time of a person
Voluntary Act	Not voluntary automatic by operation of law	Voluntary
Written document	No. required	Required assignment deed
Scope	Liability and rights	Rights

Appropriation of Payments :- [Sec 59 – 61]

- **Appropriation means application of payments** – The question of appropriation of payments arises when a debtor owes several debts to the same creditor and make a payment that is not sufficient to discharge the whole indebtedness.

1. Appropriation of Payments

Sometimes, a debtor owes several distinct debts to the same creditor and he makes a payment which is insufficient to satisfy all the debts. In such a case, a question arises as to which particular debt the payment is to be appropriated. Section 59 to 61 of the Act lay down following rules as to appropriation of payments which provide an answer to this question.

⇒ **Appropriation as per express instructions**

Every debtor who owes several debts to a creditor has a right to instruct his creditor to which particular debt, the payment is to be appropriated or adjusted. Therefore, where the debtor expressly states that the payment is to be applied to the discharge of a particular debt, the payment must be applied accordingly.

Example : A owes B three distinct debts of Rs.2,000, 3,000 and 5,000. A sends Rs.5,000 and instructs B that the payment should be appropriated against the third debt. He is bound to appropriate the payment against the third debt only.

2. Application of payment where debt to be discharge is not indicated [60]

If section 60 is attracted, the creditor shall have the discretion to apply such payment for any lawful debt which is due to him from the person making the payment.

Example: A owes to B, among other debts, the sum of Rs.520. B writes to A and demands payment of this sum. A sends to B Rs.520. This payment is to be applied to the discharge of the debt of which B had demanded payment.

3. Application of payment where neither party appropriates [61]

The payment shall be applied in discharge of the debts in order of time whether they are or are not based by the limitation Act 1963, if the debt are of equal standing (i.e. payable on the same date) the payment shall be applied in discharge of each of these debt proportionately.

- *First interest then principle*
- *Director of payer not receiver.*
- *Right primary of the debtor*

[whatever is paid, paid according to the intention of paying it]

- *[Quickquid soivitur , sovitur secundum modum solventies]*

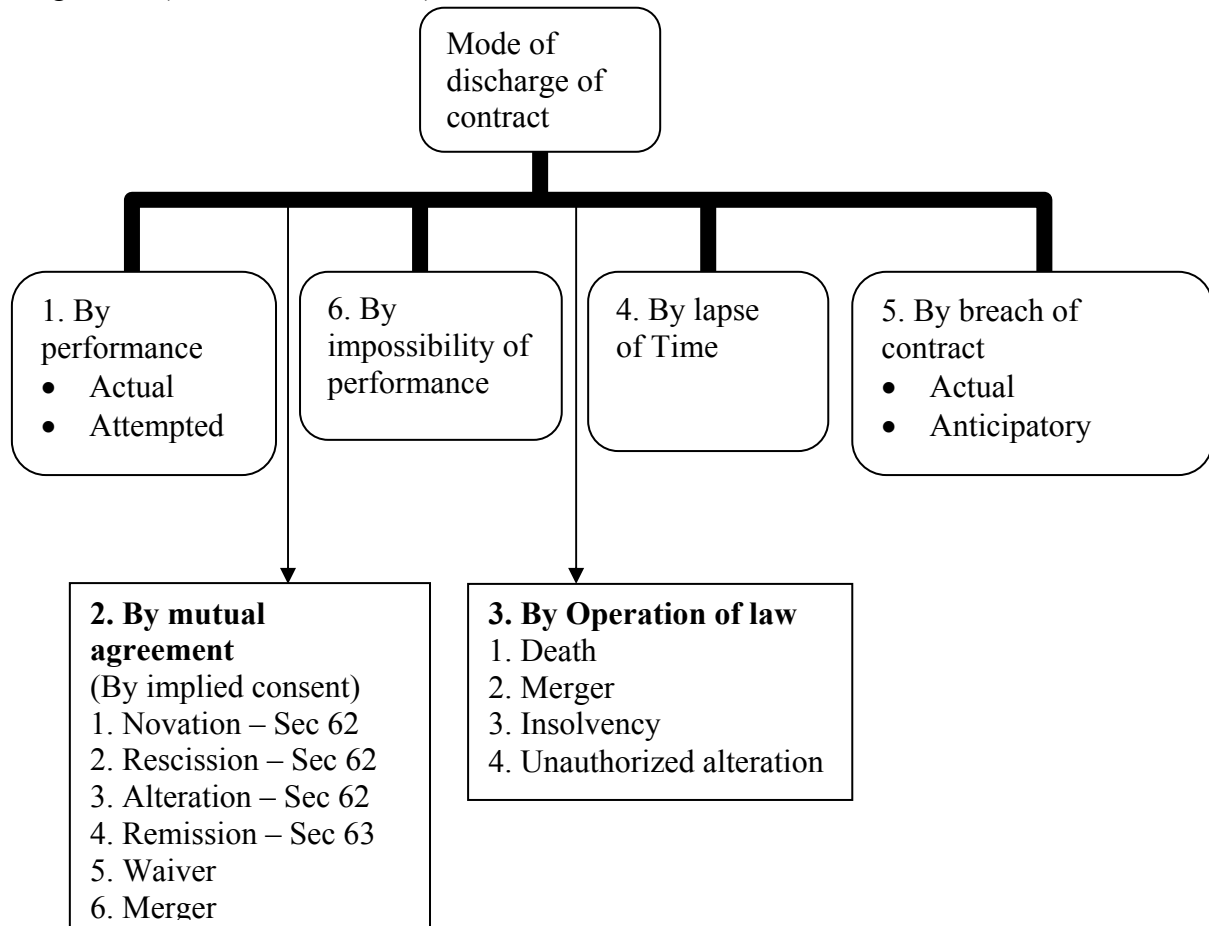
Example: A owes B, the following debts:

Amount of the debt	Positions of the debt
Rs.2,000	Time barred
Rs.1,000	Time barred
Rs.2,000	Due on 10 th June
Rs.3,000	Due on 20 th September

A sends Rs. 1,500 in the month of June. He neither expressly intimates nor circumstance of the case imply as to which debt the amount is to be applied. Moreover, B also does not appropriate the payment at his own discretion. Therefore, the payment will be appropriated in order of time. However, here in this case two debts are of equal standing. The payment will, therefore, be appropriated in order of time but to all equal standing debts. In this case, Rs.1,500 will be appropriated towards the first two debts of equal standing proportionately, i.e. in the ratio of 2:1.

DISCHARGE OF A CONTRACT

Discharge of a contract means termination of contractual relation between the parties to a contract in other words a contract is discharged when the rights and obligations created by it are extinguished (i.e. comes to an end).



Discharge by performance

fulfillment of obligations by a party to the contract within the time and in the manner prescribed in the contract.

- (a) **Actual performance** – no party remains liable under the contract. Both the parties performed.
- (b) **Attempted performance or tender.**:- Promisor offers to perform his obligation under the contract but the promisee refuses to accept the performance. It is called as attempted performance or tender of performance
- But the contract is not discharged.

Discharge by mutual agreement

- (a) **Novation [Sec 62]** – Novation means substitution of a new contract in the place of the original contract new contract entered into in consideration of discharge of the old contract. The new contract may be.
- Between the same parties (by change in the terms and condition)
 - Between different parties (the term and condition remains same or changed)

Following conditions are satisfied :-

- (1) All the parties **must consent** to novation
- (2) The novation must take place before the breach of original contract.
- (3) The new contract must be valid and enforceable.

Example:

- A owes B Rs.50,000. A enters into an agreements with B and gives B a mortgage of his estate for Rs.40,000 in place of the debt of Rs.50,000. (Between same parties)
 - A owes money Rs.50,000 to B under a contract. It is agreed between A, B & C that B shall henceforth accept C as his Debtor instead of A for the same amount. Old debt of A is discharged, and a new debt from C to B is contracted. (Among different parties)
- (b) **Rescission [62]:-** Rescission means cancellation of the contract by any party or all the parties to a contract. X promises Y to sell and deliver 100 bales of cotton on 1st oct his go down and Y promises to par for goods on 1st Nov. X does not supply the goods. Y may rescind the contract.
- (c) **Alteration [62] :-** Alteration means a change in one or more of the terms of a contracts with mutual consent of parties the parties of new contracts remains the same.
Ex:- X Promises to sell and delivers 100 bales of cotton on 1st oct. and Y promises to pay for goods on 1st Nov. Afterwards X and Y mutually decide that the goods shall be delivered in five equal installments at is godown . Here original contract has been discharged and a new contract has come into effect.
- (d) **Remission [63]:-** Remission means accepting a lesser consideration than agreed in the contract. No consideration is necessary for remission. Remission takes place when a Promisee-
- (a) *dispense with (wholly or part) the performance of a promise made to him.*
 - (b) *Extends the time for performance due by the promisors*
 - (c) *Accept a lesser sum instead of sum due under the contract*
 - (d) *Accept any other consideration that agreed in the contract*
- A promise to paint a pictured for B. B after words for him to do so. A is no longer bound to perform the promise.

- (e) **Waiver:-** Intentional relinquishment of a right under the contract.

(f) Merger :- conversion of an inferior right into a superior right is called as merger.
(Inferior right end)

Basis	Novation	Alteration
1. Meaning	It is substitution of an existing contract with new one.	It is alteration to some of the terms and conditions of the original Contract.
2. Change in parties	It is made by – (a) change in the terms of the contract or (b) change in the Contracting Parties.	Terms of the contract may be altered by mutual agreements by the same contracting parties. So, there is no change in the parties.
3. New Contract	A New Contract comes into existence in place of the old one.	It is not essential to substitute a new contract in place of the old contract.
4. Performance	Old contract need not be performed New contract must be performed.	Old contract as per the altered terms shall be performed.

Discharge by operation of law

- (a) **Death :-** involving the personal skill or ability, knowledge of the deceased party one discharged automatically. In other contract the rights and liability passed to legal represent.
Example : A promises to perform a dance in B's theatre. A dies. The contract comes to an end.
- (b) **Insolvency:-** when a person is declared insolvent. He is discharged from his liability up to the date of insolvency.
Example: A contracts to sell 100 bags of sugar to B. Due to heavy loss by a major fire which leaves nothing to sell, A applies for insolvency and is adjudged insolvent. Contract is discharged.
- (c) **By unauthorized material alteration** – without the approval of other party – comes to an end – nature of contract substance or legal effect.
Example : A agrees upon a Promissory Note to pay Rs.5,000 to B. B the amount as Rs.50,000. A is liable to pay only Rs.5,000.
- (d) **Merger:** When an inferior right accruing to a party in a contract merges into a superior right accruing to the same party, ***then the contract conferring inferior right is discharged.***

Example: A took a land on lease from B. Subsequently, A purchases that land. A becomes owner of the land and ownership rights being superior to rights of a lessee, the earlier contract of lease stands terminated.
5. **Rights and liabilities vest in the same person:** Where the rights and liabilities under a Contract vest in the same person, the contract is discharged.
Example: A Bill of Exchange which was accepted by A, reaches A's hands after being negotiated and endorsed through 4 other parties. The contract is discharged.

Discharge by Lapse of time

Where a party fails to take action against the other party within the time prescribe under the **limitation Act, 1963**. All his rights to come end. Recover a debt – **3 Years** recover an immovable property – **12 years**

Ex.:- On 1st July 20X1 X sold goods to Y to Rs 1,00,000 and Y had made no payment till August 20X4. state the legal position on 1st Aug 20X4

- (a) If no. credit period allowed **Ans. (Refer Classroom)**
 (b) If 2 month credit period allowed.

Discharge by Breach of contract

Failure of a party to perform his part of contract

- (a) **Anticipatory Breach of contract :-** Anticipatory breach of contract occurs when the part declares his intention of not performing the contract before the performance is due .
- (i) **Express repudiation:** - 5 agrees to supply B 100 tonnes of specified category of iron on 15.01.2006 on 31.12.2005. 5 express his unwillingness to supply the iron to B.
- (ii) **Party disables himself:** - Implied by conduct.
Ex.:- 5 agrees to sell his fiat car to B on 15.01.2006 on 31.12.05 5 sells his fiat car to T.

- (b) **Actual Breach of contract :-** If party fails or neglects or refuses to perform his obligation on the due date of performance or during performance. It is called as actual breach.

During performance – party has performed a part of the contract.

Consequences of Breach of contract:- The aggrieved party (i.e. the party not at fault) is discharged from his obligation and get rights to proceed against the party at fault. The various remedies available to an aggrieved party.

Discharge by Impossibility performance

- (a) *Effect of Initial Impossibility*
 (b) *Effect of supervening. Impossibility*

(a) **Initial Impossibility – at the time of making contract**

- Both parties know – put life into deed body – void .
- Both don't know – void.
- One know – compensate to other party

(b) **Effect of supervening Impossibility:-**

- Where an act becomes impossible after the contract is made – void
- Becomes unlawful, beyond the control of promisor – void
- Promisor alone knows about the Impossibility – compensate loss.
- When an agreement is discovered to be void or where a contract becomes void

Benefit must refund X $\frac{\text{Sing}}{\text{Ad.1000}}$ Y. y

Cases when a contract is discharged on the group of super vent Impossible

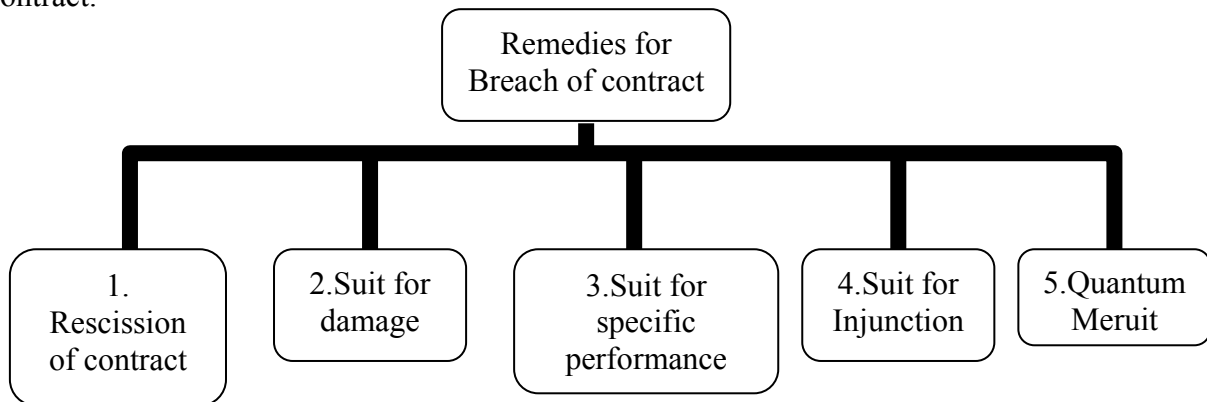
- (a) Distraction of subject matter - Failure of the ultimate purpose of contract – king coronate process.
- (b) Death of personal Incapacity Example : (Refer Classroom)
- (c) Declaration of war Example : (Refer Classroom)
- (d) change of Law Example : (Refer Classroom)
- (e) Non existence or Non occurrence of a particular state of thing necessary for performance.
Example : (Refer Classroom)

No Super Impossibility – does not become void

- Difficulty of performance – coal – transport
- Commercial Impossibility
- Default of a third party
- Strikes, knockout and civil disturbance.
- Partial Impossibility – coronation of king and to sailing around the lake by boat.

REMEDIES FOR THE BREACH OF CONTRACT

Remedy means course of action available to an aggrieved party when other party breaches the contract.



RESCISSION OF CONTRACT – SEC 39

- ⇒ It means right to party to cancel contract.
- ⇒ In case of breach of contract, other party may rescind contract.

Effect of Rescission of Contract

- ⇒ Aggrieved party is not required to perform his part of obligation under contract.
- ⇒ Aggrieved party claims compensation for any loss.
- ⇒ Party is liable to restore benefit, if any.

When can Court Grant Rescind Contract?

Court can rescind the contract in the following situation:

- ⇒ Contract is voidable.
- ⇒ Contract is unlawful.

SUIT FOR DAMAGES

- ⇒ It means monetary compensation allowed for loss.
- ⇒ Purpose is to compensate aggrieved party and *not to punish party as fault*.
- ⇒ In India, rules relating to damages are based on English judgment of *Hadley vs Baxendale*.

The facts of case were – H's mill was stopped due to the breakdown of the shaft. He delivered the shaft to common carrier to repair it and agree to pay certain sum of money for doing this work. H has informed to B that delay would result into loss of profit. B delivered the shaft after reasonable time after repair. H filed suit for loss of profit. It was held that B is not liable for loss of profit. The court laid down rule that damage can be recovered if party has breach of contract.

KINDS OF DAMAGES

The following are the different kinds of damages:

⇒ **Ordinary damages**

These are the damages which are payable for the loss arising naturally and directly as result of breach of contract. It is also known as proximate damage or natural damage.

⇒ **Special damages**

These are damages which are payable for loss arising due to some special circumstances. It can be recovered only if special circumstances which result in special loss in case of breach of contract and party have notice of such damage.

Example: A sends sample of his products for exhibition to an agent of a railway company for carriage to “New Delhi” for an exhibition. The consignment note stated: “Must be at New Delhi, Monday Certain.” Due to negligence of the company, the goods reached only after the exhibition was over. Held, the company was liable for the loss caused by late arrival of the products because the company’s agent was aware of the special circumstances.

⇒ **Exemplary or punitive or vindictive damages**

These damages are allowed not to compensate party *but as mean of punishment* to defaulting party. The court may award these damages in the case of:

- Breach of contract to marry – loss based on mental injury.
- Wrongful dishonor of cheque – smaller amount, larger the damage.

⇒ **Nominal damages**

Where party suffers no loss, the court may allow nominal damages simply to establish that party has proved his case and won. Nominal damage is very small in amount.

⇒ **Damages for inconvenience**

If party has suffered physical inconvenience, discomfort for mental agony as result of breach of contract, party can recover the damage for such inconvenience.

Example: A photographer agreed to take photographs at a wedding ceremony but failed to do so. The bride brought an action for the breach of contract. Held, she was entitled to damages for her injured feelings.

⇒ **Liquidated damages and penalty**

Party may specify amount at the time of entering into contract. The amount so specified may be (a) liquidated damage, or (b) penalty.

If specified sum represent, fair and genuine pre – estimate damages likely to result due to breach, it is called *liquidated damage*.

But if specified sum is *disproportionate to the damages, it is called as penalty*.

As regard the payment of liquidated damages and penalty court can’t increase amount of damages beyond the amount specified in the contract.

Example : A gives B, a bond for the repayment of Rs.1,000 with interest at 12 per cent, at the end of six months, with a stipulation that, in case of default, the interest shall be payable at the rate of 75 per cent, from the date of default. This is a stipulation by way of penalty, and B is only entitled to recover from A such compensation as the Court considers reasonable.

⇒ **Forfeiture of security deposit**

Any clause in contract entitling the aggrieved party to forfeit security deposit in the nature of penalty and court may award reasonable compensation.

⇒ **Payment of interest**

- It is permissible.
- If interest is in nature of penalty, court may grant relief.
- If *no rate of interest is specified in contract* party shall be liable to pay *as per the law in force or as per custom or usage of trade.*

⇒ **Cost of suit or decree**

The court has also discretion to award cost of suit for damages in addition to the damages for breach of contract.

Suit for Specific Performance

It means, demanding an order from court that promise agreed in contract shall be carried out.

⇒ **When is specific performance allowed?**

- Where actual damages arising from breach is not measurable.
- Where monetary compensation is not adequate remedy.

⇒ **When specific performance is not allowed?**

- When damages are an adequate remedy.
- Where performance of contract requires numbers of minute details and therefore not possible for court to supervise.
- Where contract is of personal in nature.
- Where contract made by company beyond its power. (ultra – vires)
- Where one party to contract is minor
- Where contract is inequitable to either party.

Example : A agree to sell B, an artist painting for Rs.30,000. Later on, he refused to sell it. Here B can file suit against A for specific performance of the contract.

Suit for Injunction

⇒ It means stay order granted by court. *This order prohibits a person to do particular act.*

⇒ Where there is breach of contract by one party and order, of specific performance is not granted by court, injunction may be granted.

Example: Film actress agreed to act exclusively for W for a year and for no one else. During the year she contracted to act for Z.

QUASI CONTRACT

[Contracts implied in law or implied contract]

It means a contract which lacks one or more of the essentials of a contract.

Quasi contract are declared by law as valid contracts on the basis of **principles of equity** i.e. *no person shall be allowed to enrich himself at the expense of another the legal obligations of parties remains same.*

Nature of Quasi contracts:-

- (a) A quasi contract does not arise from any formal agreement but is imposed by law.
- (b) Every quasi contract based upon the **principle of equity and good conscience.**
- (c) A quasi contract is always a right to money and generally though not always to a liquidated sum of money.
- (d) A suit for its breach may be filed in the same way as in case of a complete contract.
- (e) The right grouted to a party under a quasi contract is not available to him against the whole world but against particular person(s) only.
- (f) A suit for breach of a quasi contract may be filed in the same way as in case of an ordinary contract
- (g) Although there is no contract between the parties under a quasi contracts, yet they are put in the same position as if he were a contract between them .

Provisions relating to various quasi contracts are contained in section 68 to sec 72 of the contract Act, 1872.

TYPES OF QUASI CONTRACTS

Sec. 68 Supply of Necessaries	Sec. 69 Reimbursement of money due	Sec. 70 Obligation to pay for benefit out of non – gratuitous act	Sec. 71 Responsibility of Finder of Goods	Sec.72 Person receiving goods are money by mistake
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Sec. 68: If a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person, with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.

1. Meaning of Necessaries:

- (a) Necessaries normally include articles required to maintain a particular person in the state, degree and station in life in which he is.
- (b) They are essentials to run a life.

- (c) An item will not be considered necessary, if a person already has sufficient supply of things of such kind.
 - (d) Necessaries include Services rendered to a person.
 - (e) What constitutes necessaries depends on the circumstances of each case.
2. **Only property liable: person not liable:**
- (a) It is only the property (movable and immovable) of the incapable person they shall be liable.
 - (b) He cannot be held liable personally.
 - (c) Where he doesn't own any property, nothing shall be payable.
3. **Example:** (i) A supplies B, a lunatic, with necessaries suitable to his condition in life. A is entitled to be reimbursed from B's property. (ii) A who supplies the wife and children of B, a lunatic, with necessaries suitable to their condition in life, is entitled to be reimbursed from B's Property.

Payment By a person who is interested in a transaction [69]

Condition of section [69]

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

- (a) one party is legally bound to make a payment
- (b) Some other persons make such payment
- (c) The person making such payment is not legally bound to make such payment
- (d) The person making such payment is interested in paying such amount

Legal effect of sec 69.:- If all the conditions of sec 69 are satisfied the person who is interested in paying such amount shall be entitled to recover the payment made by him.

Ex.:- The goods belonging to A were wrongfully attached in order to realize arrears of Government revenue due by G. A paid the amount to save the goods from sale at which it was held that A was entitled to recover the amount from G.

Obligation of person enjoying benefit of non-gratuitous act [70]

Conditions of section 70.

Sec.70 : Where a person, lawfully does anything for another person, or delivers anything to him; not intending to do so gratuitously, and such other person enjoys the benefits thereof, then he is bound to make compensation to the other in respect of, or to restore the thing so done or delivered.

- (a) A person has lawfully done something for another person or delivered something to another person.
- (b) Such person must have acted *voluntarily and non – gratuitously*.
- (c) The other person has enjoyed the benefit of the act done for him or the thing delivered to him.

Legal effect of sec 70.

- If the conditions of sec70 are satisfied, there will be quasi contract between the parties.
- Consequently, the party who has done something or delivered a thing shall be entitled to recover its value from the person who obtained the benefit of the same.

Ex.:- A trades man leaves goods at B's house by mistake, B treat the goods as his own, He is bound to pay A for them.

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

Finder of Goods [71]

A person who finds goods belonging to another and takes them into custody, is subject to the same responsibility as a **Bailee**.

A finder of goods has same rights and duties as that of **bailee**.

- Duty to take reasonable care of the goods
- Duty not to use the goods for his own purpose.
- Duty not to mix the goods with own goods

Right to recover expenses, reward, sell the goods

Ex.:- X a guest found a diamond ring at a birthday party of Y. X told Y and other guests about it. He has performed his duty to find the owner. If he is not able to find the owner he can retain the ring as bailee.

Money paid under a mistake or conversion [72]

Sec. 72: A person to whom money has been paid, or anything delivered by mistake or under coercion, must repay or return it.

Conditions of **Sec. 72**

- (a) A person has
 - (i) paid money to another person or
 - (ii) Delivered something to another person
- (b) Such person must have acted
 - Under a mistake or under coercion.

Legal effect – quasi contract, recover its value from the person who obtained the benefit of same.

Example: (i) A and B jointly owe Rs.1,000 to C. A alone pays the full amount to C and B not knowing this fact, pays Rs.1,000 again to C. C is bound to repay the amount to B. (ii) A Railway Company refuses to deliver certain goods to the Consignee except upon payment of an illegal charge for carriage. The Consignee pays the sum charged in order to take delivery of goods. He is entitled to recover so much of the charge as was illegally excessive.

(c) A + B . – 100 – A – 100, B – 100, B – return.

Compensation for failure to discharge obligation created by quasi contract [73]

When an obligation created by quasi contract is not discharged the injured party is entitled to receive the same compensation from the party in default as if such person had, contracted to discharge it and broken his contract.

Quantum meruit: - [as much as is earned]

One party preventing the other:- If a party prevents the other party from completing his obligation under the contract the aggrieved party may claim payment on quantum meruit for the part of contract already performed by him.

(a) In case of void agreement or contract that becomes

- Any person who has received any advantage under such agreement or contract is bound to restore it or to make compensation for it, to the person from who received it.
Ex.:(1)- A – B – 10000 – to marry c (A's daughter) – C – death of the time of performance of contract – B must repay A Rs 1000.
Ex.(2):- A – B decline 250 quince of rice before the 1st of May. A delivers 130 qu. Only before that day and none after. B retains the 130 qu. after the first of May. He is bound to pay A for them.
Ex(3):-A singer – two nights in every week during the next two month and B any ages to pay her Rs 100 for each night's performance on the sixth night, A willfully absent perfect. B must pay a for the five night on which she had sung.

(b) In case of Act preventing the completing of contract:-

If a party does not complete the contract or prevents the other party to complete the contract the aggrieved party can sue or quantum meruit.

Ex.c:- owner – P write a book to be published as series in his magazine. After a few series were published the publication of the magazine was stopped. It was held that P could claim payment on quantum meruit for the part already published.

(c) In case of divisible contract :-

- (1) If the contract is divisible and
- (2) If the party not at default has enjoyed benefit of the point performance.
- (3) the contract is partly performed

If the above condition an satisfied, the party at fault may claim on payment on quantum meruit for the part of contract performed by him be con recover such proportion of the contract price as the work done, by him bears to the work under the contracts.

(d) In case of indivisible contract performed completely but Badly.

- Contract is indivisible
- Lump sum consideration
- Completely performed
- Performed badly

The party at fault may recover the contract price (Lump sum price) less the deduction made for done badly.

Ex.:- X agreed to decorate Y's flat for a lump sum of Rs20,000. X did the complete work but Y complained of faulty work man stop. It costs Y another Rs3000 to remedy the defect. X could recover only Rs 17000 from Y.

(e) In case of Non – gratuitous Act – Three condition

- (i) The thing must have been done or delivered lawfully.
(ii) The person who has done or delivered the thing must not have intended to do so gratuitously
And
(iii) The person from whom the act is done must have enjoyed the benefit of the act.

Ex.:- A, a tradesman leaves goods at B's shop by mistake B treats the goods as his own. He is bound to pay A for them.

Difference between Quasi Contract and Contract

Matter	Quasi – contract	Contract
Intentionally Form	It is not intentionally formed but law imposes upon the parties.	It is intentionally formed by parties.
Essentials of contract	A quasi – contract does not possess all the essential of a valid contract.	A contract possesses all the essentials of a valid contract.
Obligations	Obligations are implied upon by the law.	Obligations are mutually created by the parties.
Foundation	It is founded upon the principle of equity.	It is founded upon general principle of law of contracts.

SPECIAL CONTRACT

Contract of Indemnity

1. INTRODUCTION TO CONTRACT OF INDEMNITY

➤ **Indemnity Meaning –**

- To make good the loss incurred by another person
- To compensate the party who has suffered some loss
- To protect a party from incurring a loss

➤ **‘Contract of indemnity Definition**

A contract is called as a ‘contract of indemnity’ if –

One party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person.

➤ **Modes of contract of indemnity**

Expressed:

When a person expressly promises to compensate the other from loss.

Implied :

When the contract is to be inferred from the conduct of the parties or from the circumstances of the case.

➤ **Essential elements of a contract of indemnity**

Contract :

All the essentials of a valid contract must also be present in the contract of indemnity

Example:- X asks Y to beat Z and promises to indemnify Y against the consequences. Y beats Z and is fined Rs.1,000. Y cannot claim this amount from X because the object of the agreement was unlawful.

Loss to one party

A person can indemnify another person only if such other person incurs some loss or it has become certain that he will incur some loss.

Indemnity by the promisor

The purpose of contract of indemnity is to protect the indemnity holder from any loss that may be caused to the indemnity holder.

Reason for loss

The contract of indemnity must specify that indemnity holder shall be protected from the ***loss caused due to –***

- Action of the promisor himself; or
- Action of any other person; or
- Any act, event or accident which is not in the control of the parties.

2. RIGHTS OF INDEMNITY HOLDER

(Sec. 125)

➤ **Right to recover damages**

The indemnity holder has the right to recover all the damages which he is compelled to pay in any suit in respect of any matter covered by the contract of indemnity.

➤ **Right to recover costs**

The indemnity holder has the right to recover all the costs which he is compelled to pay in bringing or defending such suit.

Condition:

- (a) The indemnifier authorised him to bring or defend the suit; or
- (b) The indemnity holder did not contravene the orders of the indemnifier; and The indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity.

➤ **Right to recover sums paid**

The indemnity holder has the right to recover all the sums which he has paid under the terms of a compromise of such suit.

- (a) The indemnifier authorised him to compromise the suit; or
- (b) The indemnifier holder did not contravene the orders of the indemnifier; and the indemnity holder acted as it would have been prudent for him to act in the absence of any contract of indemnity.

Contract of guarantee

3. MEANING OF CERAIN TERMS (Sec. 126)

➤ **Meaning of ‘contract of guarantee’**

A ‘contract of guarantee’ is a contract to –

- Perform the promise; or
- Discharge the liability, of a third person in case of his default.

➤ **Meaning of ‘surety’**

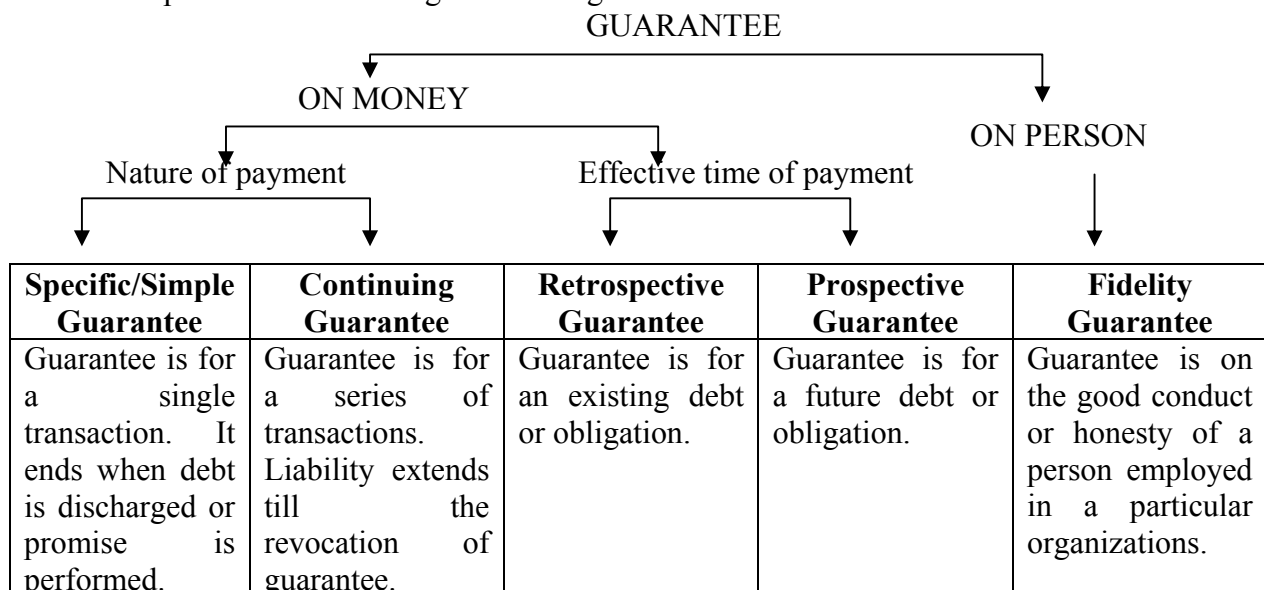
The person who gives the guarantee is called as ‘surety’

➤ **Meaning of ‘principal debtor’**

The person in respect of whose default the guarantee is given is called as ‘principal debtor’.

➤ **Meaning of ‘creditor’**

The person to whom the guarantee is given is called as ‘creditor’.



4. ESSENTIALS AND LEGAL RULES FOR A VALID CONTRACT OF GUARANTEE.

- **Must have all the essentials of a valid contract**
 - All the essentials of a valid contract must be present in the contract of guarantee.
 - Exceptions:
 - (a) Consideration received by the principal debtor is a sufficient consideration to the surety for giving the guarantee.
 - (b) Even if principal debtor is incompetent to contract, the guarantee is valid. But, if surety is incompetent to contract, the guarantee is void.
- **Primary liability of some person**
 - The principal debtor must be primarily liable. However, even if the principal debtor is incompetent to contract the guarantee is valid.
 - The debt must be legally enforceable.
 - The debt must not be a time barred debt.
- **The contract must be conditional**
 - The liability of surety is secondary and conditional.
 - The liability of surety arises only if the principal debtor makes a default.
- **No misrepresentation**
 - The creditor should disclose all the facts which are likely to affect the surety's liability.
 - There must not be any concealment of facts.
- **Form of contract**

A contract of guarantee may be either oral or written.
- **Joining of other co-sureties**

The guarantee by a surety is not valid if –

 - A condition is imposed by a surety that some other person must also join as a co-surety; but
 - Such other person does not join as a co-surety.

5. NATURE AND EXTENT OF SURETY'S LIABILITY

- **Surety's liability is coextensive with liability of principal debtor**

General rule –

 - Surety is liable for all the debts payable by the principal debtor to the creditor.
 - Accordingly, interest, damages, costs etc. may also be recovered from the surety.

Exception:-

The contract of guarantee may provide otherwise.
- **Commencement of surety's liability**
 - The liability of surety arises immediately on default by the principal debtor.
 - The creditor is not required to –
 - (a) first sue the principal debtor; or
 - (b) first give a notice to the principal debtor.
- **Surety's liability may be limited**

The surety may fix a limit on his liability up to which the guarantee shall remain effective.

➤ **Surety's liability may be continuous**

- The surety may agree to become liable for a series of transactions of continuous nature.
- However, the surety may fix –
 - a limit on his liability upto which the guarantee shall remain effective;
 - a time period during which the guarantee shall remain effective.

➤ **Surety's liability may be conditional**

The surety may impose certain conditions in the contract of guarantee. Until those conditions are met, the surety shall not be liable.

6. CONTINUING GUARANTEE

➤ **Meaning**

A guarantee which extends to a series of transactions is called as continuing guarantee.

➤ **Revocation (Sec.130)**

Continuing guarantee may be revoked, at anytime, by the surety by giving a notice to the creditor. However, revocations shall be effective only in respect of future transactions (i.e. the liability of the surety with regard to previous transactions remains unaffected)

➤ **Death of surety (sec. 131)**

Death of the surety operates as a revocation of a continuing guarantee as to future transaction.

7. RIGHTS OF SURETY

(Sec.140, 141, 145, 146 and 147)

I. Rights against principal debtor

➤ **Right of indemnity**

- There is an implied promise by the principal debtor to indemnify the surety.
- The surety is entitled to claim from the principal debtor all the sums which he has rightfully paid.
- The surety cannot recover such sums, which the he has paid wrongfully.

➤ **Right of subrogation**

On payment of a debt, the surety shall be entitled to all the rights which the creditor could claim against the principal debtor.

II. Rights against the creditor

➤ **Right of subrogation**

- The surety can claim all the securities which the creditor had at the time of giving of guarantee
- It is immaterial as to whether the surety had knowledge of such securities or not.
- If the securities are returned by the creditor to the principal debtor the surety is discharged to the extent of value of the securities so returned.

➤ **Right of set off**

- Any amount recoverable by the principal debtor may be claimed as deduction.
- Any amount recoverable by the surety may be claimed as deduction.

➤ **Rights to share reduction**

If the principal debtor becomes insolvent, the surety may claim proportionate reduction in his liability.

III. Rights against co-sureties

➤ **Rights to contribution**

General Rule

All the co-sureties shall contribute equally

Exceptions

- Under the contract of guarantee, the co-sureties may fix limits on their respective liabilities. Even in such a case, the co-sureties shall contribute equally, subject to maximum limit fixed by the co-sureties.
- The contract of guarantee may provide that the co-sureties shall contribute in some other proportion.

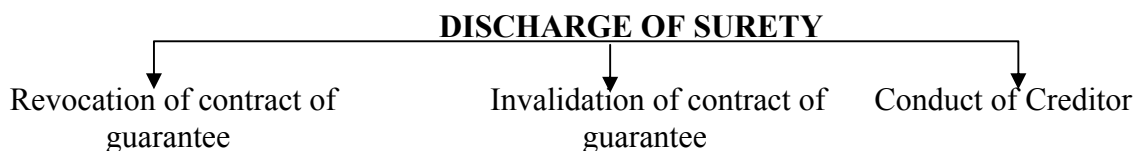
➤ **Right to share benefit of securities**

If one co-surety receives any security, all the other co-sureties are entitled to share the benefit of such security.

8. DISTINCTION BETWEEN INDEMNITY AND GUARANTEE

Basis	Contract of indemnity	Contract of guarantee
Meaning	A contract by which one party promises to save the other from loss caused to him is called as a contract of indemnity.	A contract of guarantee is a contract to perform the promise, or discharge the liability of a third person in case of his default.
Parties	There are only two parties, viz, the indemnifier and the indemnity holder.	There are three parties, viz., the principal debtor, creditor and the surety.
Nature of liability	The liability of the indemnifier is primary and independent.	The liability of the surety is secondary and conditional.
Number of contract	In a contract of indemnity there is only one contract.	In the contract of guarantee, there are three contracts; first between principal debtors and creditor, second between creditor and surety, and third between surety and principal debtor.
Nature of contract	The contract of indemnity is for the reimbursement of the loss.	The contract of guarantee is for the security of the creditor.

9. DISCHARGE OF SURETY FROM LIABILITY (Sec.130 to 144)



➤ **Notice of revocation by surety**

• **Specific guarantee**

A specific guarantee can be revoked only if liability of principal debtor has not arisen.

• **Continuing guarantee**

A continuing guarantee can be revoked only in respect of future transactions.



➤ **Death of surety**

In case of death of surety, a continuing guarantee is automatically revoked in respect of future transactions.

➤ **Variance in terms**

If –

- Any variation is made subsequent to formation of contract of guarantee; and
- Such variation is made without the consent of surety;

Then –

- The surety shall be released for such transactions as take place after such variation.

➤ **Release or discharge of principal debtor**

If –

- The creditor makes a fresh contract with the principal debtor whereby the principal debtor is relieved from his liability; or –
- The creditor does any act or omission resulting in discharge of the principal debtor;

Then –

The surety is discharged.

➤ **Composition with principal debtor**

The surety is discharged if the creditor makes a composition with the principal debtor without obtaining the consent of surety.

➤ **Giving extension of time to principal debtor**

The surety is discharged if the creditor extends the time for repayment of the debt by the principal debtor without obtaining the consent of the surety.

➤ **Loss of security by a creditor**

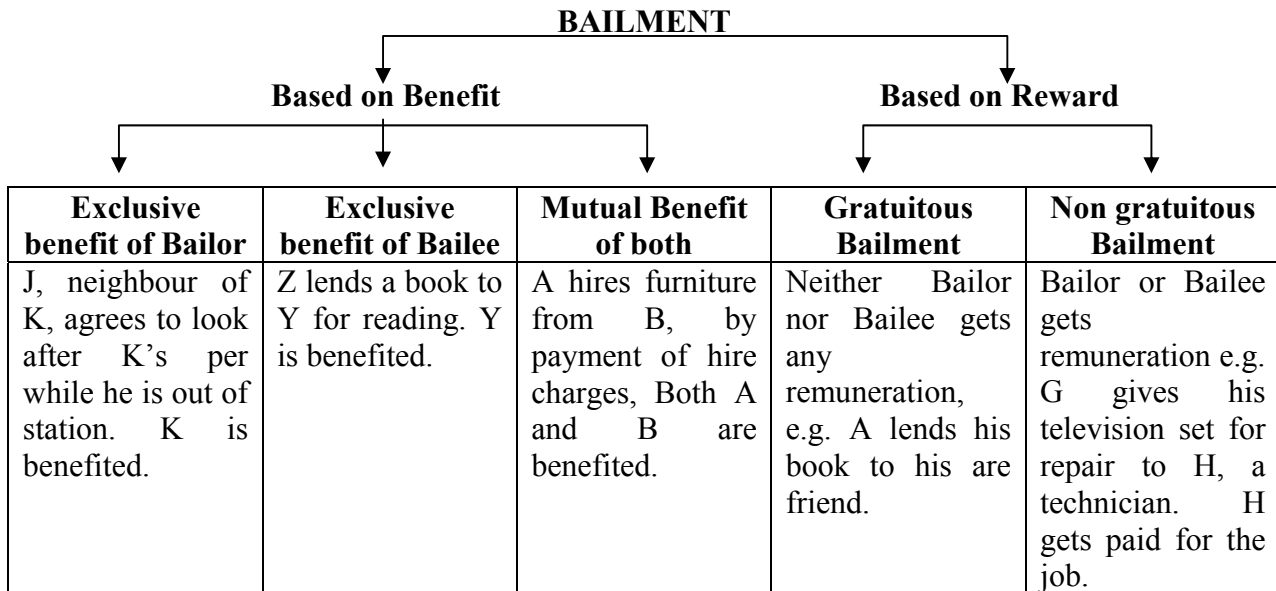
The surety is discharged to the extent of security lost by the creditor.

BAILMENT

10. MEANING OF CONTRACT OF BAILMENT

(Sec. 148)

A 'bailment' is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them.



11. ESSENTIALS OF A VALID CONTRACT OF BAILEMENT

(Sec.148)

➤ **Contract**

- There must be a contract.
- The contract may be expressed or implied.

➤ **Goods**

Bailment can be made of goods only.

➤ **Delivery**

There must be delivery of goods by one person to another person.

➤ **Purpose of delivery**

- The goods must be delivered for some purpose.
- The purpose may be expressed or implied.

➤ **Return or disposal of goods**

- *The delivery of goods must be conditional*
- *The condition shall be that the goods shall be –*
 - returned (either in original form or in any altered form); or
 - disposed of according to the directions of the bailor, when the purpose is accomplished.

12. MODES OF DELIVERY

(Sec.149)

- **Actual delivery**
Transfer of physical possession of goods from one person to another .
- **Symbolic delivery**
 - Physical possession of goods is not actually transferred.
 - A person does some act resulting in transfer of possession to any other person.

Examples:

 - (a) Delivery of keys of a car to a friend
 - (b) Delivery of a railway receipt.
- **Constructive delivery**
If –
 - A person is already in possession of goods of owner.
 - Such person contracts to hold the goods as a bailee for a third person.

Then –
Such person becomes the bailee, and the third person becomes the bailor.

13. CLASSIFICATION OF BAILMENT

- **Gratuitous bailment**
- *Bailment without any charges or reward, i.e. –*
 - No hire charges are paid by bailee; and
 - No custody charges are paid by bailor.
- **Non – gratuitous bailment**
Bailment for some charges or reward, i.e.-
 - Hire charges are paid by bailee; or
 - Custody charges are paid by bailor.

14. DUTIES OF A BAILOR (Sec. 150, 158, 159 and 164)

- **Disclose faults in goods [Sec. 150]:**
Bailor is bound to disclose to Bailee, faults in the goods bailed, of which he has knowledge. He should also disclose such information which – (a) materially interferes with the use of goods, or (b) expose the Bailee to extraordinary risk.

Liability for Defects in Goods

In case of Gratuitous bailment	In case of Non – Gratuitous Bailment
Bailor is liable only for those losses which arise due to non – disclosed risks.	Bailor is liable for damages whether or not he was aware of the existence of faults.

Example: A owning a motorcycle, allows B, his friend, to take it for a joy ride. A knows that its brakes were not proper but does not disclose it to B. B meets with an accident. A is liable to compensate B for damages. But when A had lent the motorcycle on hire, he is liable to B even if he did not know of the failure of his brakes.

- **Bear expenses [Sec.158]**

Expenses of Bailment

In case of Gratuitous bailment	In case of Non – Gratuitous Bailment
Bailor shall repay to Bailee, all necessary expenses incurred by him for	Bailor is liable to repay only extra – ordinary expenses, and not the ordinary

the purpose of Bailment.	expenses.
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Example: M lends his car to N and it runs out of petrol. N can recover the amount paid for refueling (ordinary expenses). If in case, the car suffers a breakdown, N can recover such charges as are paid by him in bringing it back to condition (extra – ordinary expenses). He M hired the car to N, he shall be liable only for the repair charges, being extra ordinary expenses.

➤ **Indemnify the bailee for defective title**

The bailor shall indemnify the bailee for any loss caused to bailee due to defective title of bailor.

➤ **Indemnify the bailee for premature termination**

If –

- the bailment is gratuitous ; and
- for a specific period.

Then –

(a) the bailor may compel the bailee to return the goods before expiry of the period of bailment; but

(b) the bailor shall indemnify the bailee for any loss incurred by the bailee.

➤ **Receive back the goods**

- It is the duty of the bailor to receive back the goods, when returned by bailee.
- If the bailor wrongfully refuses to receive back the goods, he shall be liable to pay ordinary expenses of custody of goods incurred by the bailee.

15. DUTIES OF A BAILEE

(Sec.151 to 157)

➤ **Take reasonable care**

- *The bailee must take such case of goods as a man of ordinary prudence would take care of his own goods.*
- *The bailee shall not be liable for any loss or destruction of goods, if –*
 - (a) he is not negligent; or
 - (b) the loss was caused due to an act of God or other unavoidable reasons.

➤ **Not to make unauthorized use of goods**

- The bailee must not make any unauthorized use of the goods.
- If the bailee makes any unauthorized use of goods, then –
 - (a) the bailment becomes voidable at the option of the bailor; and
 - (b) the bailee shall be liable for any loss or damage even if such loss is caused due to an act of God or other unavoidable reasons.

➤ **Not to mix goods**

Goods are mixed with bailor's consent

The parties shall have a proportionate interest in such mixture.

Goods are mixed without bailor's consent, but the goods are separable

- The bailee shall pay the expenses of separation.
- The bailee shall pay damage incurred by the bailor.

Goods are mixed without bailor's consent, and goods are not separable

The bailee shall compensate the bailor for any loss caused to him.

➤ **Return the goods**

- *The bailee must return the goods, without waiting for demand from bailor, if –*
 - (a) the time specified in the contract has expired ; or
 - (b) the purpose specified in the contract is accomplished.
- *If the goods are not so returned, then –*
 - (a) the goods shall be at the risk of the bailee;
 - (b) the bailee shall be liable for any loss or damage, even if such loss is caused without any fault or negligence of the bailee or due to an act of God or other unavoidable reasons.

➤ **Return accretion to goods**

The bailee must return to the bailor any accretion (i.e., addition) to the goods bailed.

➤ **Not to set up an adverse title**

The bailee has no right to allege that the bailor had no authority to bail the goods.

16. RIGHTS OF A BAILOR (Sec. 153, 159, 163, 180, 181)
➤ **Terminate the bailment**

If –

The bailee does any act inconsistent with the terms and conditions of the contract of bailment.

Then –

The bailment becomes voidable at the option of the bailor.

➤ **Demand back the goods**

If –

The bailment is gratuitous; and

For a specific period.

Then –

(a) the bailor may compel the bailee to return the goods before expiry of the period of bailment; and

(b) the bailor shall indemnify the bailee for any loss incurred by the bailee.

➤ **File suit against wrongdoer**

The bailor has the right to sue –

- A third party who does any damages to the goods; or
- A third party who deprives the bailee from using the goods

➤ **Sue the bailee**

The bailor may sue the bailee to enforce his duties.

17. RIGHTS OF A BAILEE (Sec. 165, 166, 167, 170, 180)
➤ **Right to compensation**

The bailee has the right to be indemnified by the bailor, if –

- The bailor has no title to the goods; and
- As a consequence, the bailee suffers some loss.

➤ **Return the goods**

- It is the duty as well as the right of the bailee to return the goods to the bailor.
- In case of joint bailor, the goods may be returned to any of joint bailors.

➤ **Recover charges incurred***Extra ordinary expenses*

- The bailor is liable to pay the extraordinary expenses.
- The bailee may recover the extraordinary expenses paid by him.

Ordinary expenses

If the bailment is gratuitous, the bailor is liable to pay the ordinary necessary expenses, i.e., the bailee has the right to recover the ordinary necessary expenses incurred by him.

➤ **Suit for deciding the title**

The bailee may apply to the Court for deciding the title to goods, if a person other than the bailor claims that the goods belong to him.

➤ **File suit against wrongdoer**

The bailee has the right to sue –

- A third party who does any damages to the goods; or
- A third party who deprives the bailee from using the goods.

➤ **Right of lien**

The bailee has the right to retain the goods delivered to him until the charges due to him are paid by the bailor.

18. DISTINCTION BETWEEN BAILEE'S PARTICULAR AND GENERAL LIEN

Basis of distinction	Bailee's particular lien	Bailee's general lien
1. Natural of right	Particular lien gives right to retain only such goods in respect of which charges due remain unpaid.	General lien gives right to retain any goods belonging to another person for any amount due from him.
2. Condition for exercising lien	Particular lien can be exercised only when some labour or skill has been expended on the goods, resulting in an increase in value of goods.	General lien may be exercised even though no labour or skill has been expended on the goods.
3. Right to whom?	Every bailee is entitled to particular lien.	General lien can be exercised by only such persons as are specified u/s 171. e.g., bankers, factors, wharfingers, Attomeys of High Court, policy brokers. Any other bailee may exercise general lien if there is an agreement to this effect.

19. TERMINATION OF BAILMENT**(Sec.153, 159 and 162)**

Situation	Explanation	Example
1. Expiry of specified	When bailment is for specific	Z lends a moped to Y for a

period	period, it terminates on the expiry of the specified period.	period of 3 months April – June. The Bailment terminates by the end of June.
2. Accomplishment of specified purpose	Where bailment is for a specified purpose, it terminates when such purpose is accomplished.	G hires tables and chairs, utensils, etc. from H for organizing his son's engagement. G shall return them once the engagement functions are over.
3. Bailee's act inconsistent with conditions	When bailee does some act which is inconsistent with the terms and conditions of bailment, the Bailor may terminate the bailment.	J gives his car to K keeping it in K's garage. K gives it to his son for racing. J can terminate the bailment.
4. Destruction of subject matter	When goods bailed are destroyed, Bailment comes to an end.	K hires a cycle from L. When the cycle is damaged beyond repair in an accident, bailment ends.
5. Gratuitous Bailment	<ul style="list-style-type: none"> • Gratuitous Bailment can be terminated at any time. • Also, a Gratuitous Bailment ends by the death of either Bailor or Bailee. (Sec162) 	Note: Where premature termination of bailment by the Bailor, causes loss to the Bailee exceeding the benefits derived by him, the Bailor shall indemnify the Bailee.

20. FINDER OF GOODS**(Sec. 71, 168 and 169)**➤ **Finder of lost goods [Sec 71]**

A person, who finds goods belonging to another and takes them into his custody, is subject to the same responsibility as a Bailee.

➤ **Implied Agreement**

There is an agreement, implied by law between finder and owner of goods.

➤ **Duties of Finder**

A finder of lost goods is treated as Bailee of goods found. His duties are –

- To take initiative to find the real owner of the goods,
- To take reasonable care of the goods found,
- Not to put the goods found for his personal use, and
- Not to mix the goods found with his own goods.

➤ **Rights of Finder:**

Suit for specific reward [Sec.168]	Right of Sale [Sec.169]
Finder of goods is not entitled to sue that owner for compensation for trouble and expenses voluntarily incurred in – (a) preserving the goods, or (b) finding out the owner. However, he is entitled to –	If a thing which is commonly the subject of sale is lost, and <ul style="list-style-type: none"> • Owner cannot be found with reasonable diligence, [or] • Owner, if found, does not pay the lawful charges of the Finder.

<p>(a) Lien: Retain the goods against the owner till he receives such compensation</p> <p>(b) Suit: Sue the owner for payment of any specific reward offered by the owner for the return of goods lost, and retains the goods till payment of such reward.</p>	<p>Then, Finder of Goods is entitled to sell the same when –</p> <p>(a) the thing is in danger of perishing, or</p> <p>(b) the thing is in danger of losing the greater part of its value, or</p> <p>(c) The lawful charges of finder, amount to $2/3^{\text{rd}}$ of the value of the thing lost and found.</p>
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PLEDGE

21. MEANING OF 'PLEDGE', 'PAWNOR', 'PAWNEE' (Sec.172)

- **'Pledge'**
The bailment of goods as security for payment of a debt or performance of promise is called 'pledge'.
- **'Pawnor'**
The bailor in case of a pledge is called as 'pawnor'.
- **'Pawnee'**
The bailee in case of pledge is called as 'pawnee'.

22. ESSENTIALS A VALID CONTRACT OF PLEDGE (Sec.172)

- **Contract**
 - There must be a contract
 - The contract may be expressed or implied.
- **Goods**
Pledge can be made of goods only.
- **Delivery**
There must be delivery of goods by one person to another person.
- **Purpose of delivery**
 - The goods must be delivered for some purpose.
 - The purpose must be to deliver the goods as security for
 - (a) payment of a debt; or
 - (b) performance of a promise.
- **Return of goods**
 - The delivery of goods must be conditional
 - The condition shall be that the goods shall be –
 - returned (either in original form or in altered form); or
 - Disposed of according to the directions of the pawnor when the purpose is accomplished.

23. RIGHTS OF PAWNEE (Sec.173 and 176)

- **Right of Retainer [Sec.173]**
Pawnee may retain the goods pledged for –
 - (a) payment of the debt or the performance of promise,
 - (b) any interest due on the debt; and
 - (c) all necessary expenses incurred by him with respect to possession or for preservation of goods pledged.
- **Retainer for subsequent advances [Sec.174]**

- (a) Where the Pawnee lends money to the Pawnor subsequently, after the date of pledge, it shall be presumed that he has a right of retainer over the goods already pledged in respect of the subsequent lending also.
- (b) This presumption can be made invalid only by an expenses provision to that effect.
- **Reimbursement of Expenses [Sec.175]**
Where the Pawnee incurs extraordinary expenses to preserve the goods pledged with him, he is entitled to receive such amount from the Pawnor.
- **Rights in case of default by Pawnor [Sec.176]**
- (a) **Suit:** Pawnee may institute a suit against Pawnor when there is a default in payment of debt or performance of promise at the stipulated time.
- (b) **Retention / Sale of goods:** Pawnee may – (a) retain the goods pledged as collateral security, or (b) sell the goods pledged by giving a reasonable notice to the Pawnor.
- (c) **Surplus / Deficit on Sale :** When there is a surplus on sale, Pawnee shall pay the excess to the Pawnor. In case of deficit, Pawnor shall be liable for the balance amount.
- (d) **No Notice:** Where the Pawnee does not give a reasonable notice to the Pawnor, the sale is valid, but Pawnee is liable to pay damages to Pawnor.
- **Right against true owner of goods [Sec.178A]**
- (a) Where the Pawnor has acquired possession of pledged goods, under a voidable contract u/s 19 or 19A but contract has not been rescinded at the time of pledge, the Pawnee acquires a good title to the goods, against the true owner.
- (b) The title of Pawnee is good only where – (a) he had no notice of the Pawnor's defect in title and (b) he acts in good faith.

Reasonable notice u/s 176 means that a notice of intended sale of the security by the Creditor within a certain date, so as to afford an opportunity to the Debtor to pay the amount within the time mentioned in the notice. Notice of sale is essential and a clause in the agreement excluding the requirement of Notice is inconsistent with the Act & is void and unenforceable.	Prabhat Bank Ltd. vs Babu Ram
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24. DUTIES OF A PAWNOR

(Sec.175)

- **Pay the debt**
The pawnor is liable to pay the debt or perform his promise as the case may be.
- **Pay deficit on sale**
If the pawnee sells the goods due to default by the pawnor, the pawnor must pay the deficit.
- **Pay extra – ordinary expenses**
The pawnor is liable to pay to the pawnee any extraordinary expenses incurred by the pawnee for preservation of goods.
- **Disclose faults in goods**
The pawnor is liable to disclose all the faults which –

- (a) are material for use of the goods; or
- (b) may put the pawnee to extraordinary risks.

➤ **Indemnify the pawnee**

If loss is caused to the pawnee due to defect in pawnor's title to the goods, the pawnor must indemnify the pawnee.

25. DUTIES OF PAWNEE

➤ **Not to use the goods**

- The pawnee has no right to use the goods
- However, he may use the goods, if he has been so authorised by the pawnor.

➤ **Return the goods**

The pawnee must return the goods if the pawnor pays the debt or performs his promise.

➤ **Take reasonable care**

The pawnee must take such care of goods pledged as a man of ordinary prudence would take care of his own goods.

➤ **Not to mix goods**

The pawnee must not mix his own goods with the goods pledged.

➤ **Return increase in goods**

The pawnee must return to the pawnor any accretion to the goods pledged with him.

26. RIGHTS OF A PAWNOR

(Sec.177)

➤ **Redeem the goods pledged**

Meaning of redemption

Right to recover back the goods by making payment of the debt or performance of promise.

Time for redemption

Where time of redemption is fixed, the pawnor may exercise redemption –

- (a) within the time so fixed; or
- (b) even after expiry of time so fixed, provided –
 - the pawnee has not sold the good; and
 - the pawnee pays the pawnee all expenses arising on account of his default.

➤ **Enforce pawnee's duties**

The pawnor has the right to enforce the duties of pawnee, if the pawnee fails to fulfill his duties.

➤ **Receive increase in goods**

The pawnor has the right to recover from pawnee any increase in goods pledged.

➤ **Right to receive notice of sale**

In case of default by the pawnor to pay the debt or perform his promise, the pawnee has the right to sell the goods, after giving a reasonable notice to the pawnor. If the pawnee fails to give notice, the pawnor has the right to recover the loss incurred by him.

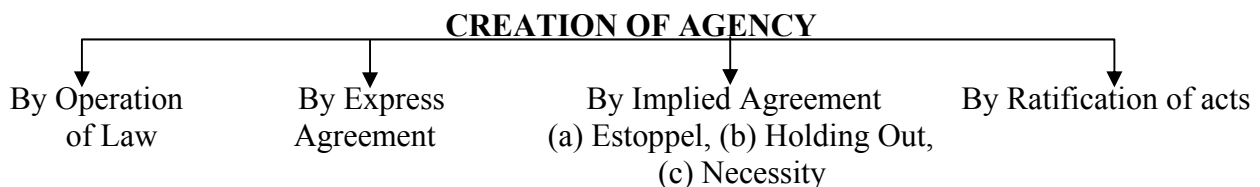
Basis	Pledge	Bailment
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1. Purpose	Pledge is bailment of goods for a specific purpose, i.e. to provide a security for a loan or fulfillment of an obligation.	Bailment may be for purpose other than by way of providing security for a loan or fulfillment of an obligation. It may be for purpose like repairs, safe custody, etc.
2. Sale of Goods	Pawnee, i.e. Pledgee has a right of sale of goods pledged on default of Pawnor. He can do so by giving a notice to the pawnor.	There is no right of sale to the Bailee. Bailee may either – (a) retain goods, or (b) sue the Bailor for non – payment of his dues.
3. Use of Goods	Pledgee has no right of using goods pledged.	Bailee can use the goods bailed as per terms of contract.

AGENCY

27. INTRODUCTION TO CONTRACT OF AGENCY (Sec.182)

- **Meaning of ‘agent’**
An ‘agent’ is a person employed to –
 - Do any act for another; or
 - Represent another in dealings with third persons.
- **Meaning of ‘principal’**
‘Principal’ is the person –
 - For whom an act is done by the agent; or
 - Who is represented by the agent in respect of dealing with third persons.
- **Test of agency**
Where a person has the capacity to –
 - Create contractual relations between the principal and a third party;
 - Bind the principal by his own acts, there exists a relationship of agency.



28. SALIENT FEATURES OF AGENCY (Sec. 183, 184, 185 and 226)

- **Principal is liable for the acts of agent**
 - The principal is liable for all the acts of an agent which are lawful and within the scope of agent’s authority.
 - The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.
- **Who may employ an agent?**
 Any person may employ an agent if –
 - He is of the age of majority; and
 - He is of sound mind.
- **Who can be an agent?**
 - Any person may become an agent.
 - Even a minor or a person of unsound mind can become an agent
- **Liability of agent**
 - Generally an agent is liable to the principal
 - An agent is not liable to the principal if he is a minor or is of unsound mind.
- **Requirement of consideration**
 No consideration is necessary for creating an agency.

29. MODES OF CREATION OF AGENCY (Sec.187, 189, 196, 214 and 237)➤ **Express agreement**

- A person may employ another person as his agent by entering into an express agreement with him.
- The agreement may be either oral or written.

➤ **Implied agreement***Agency by estoppel***If –**

- a person makes a representation (by his words or conduct) to a third person that a certain person is his agent; and
- the third party believing such representation to be true, enters into a contract with the pretended agent.

Then –

- the person making the representation is prevented from denying the truth of agency. He may be held liable as a principal by such third party.

Agency of holding out

Such an agency comes into existence when a person by his affirmative or positive conduct leads third persons to believe that person doing some act on his behalf is doing with authority.

➤ **Agency by necessity – Conditions**

- (i) There was an actual and definite necessity for acting on behalf of the principal.
- (ii) The agent was not in a position to communicate with the principal.
- (iii) The act was done for the purpose of protecting the interest of his principal.
- (iv) The agent has exercised such reasonable care as a man of ordinary prudence would have exercised in his own case.
- (v) The act was done bonafide.

➤ **Agency by operation of law**

Agency by operation of law arises where the law treats one person as an agent of another.

➤ **Agency by ratification***Meaning***If –**

- a person (viz., pretended agent) acts on behalf of another person (viz, the principal)
- the pretended agent acts without the knowledge or consent of the principal; and
- Afterwards, the principal accepts such act.

Then –

- Agency by ratification comes into existence.

Effects of ratification

- The principal is bound by the acts ratified by him as if such acts had been performed by his authority.
- Ratification relates back to the actual date of the act that is ratified and not from the date when the act ratified.

30. ESSENTIALS OF A VALID RATIFICATION (Sec. 197 to 200)➤ **Full knowledge**

No valid ratification can be made by a person whose knowledge of the facts of the case is materially defective. In other words, the principal must have full knowledge of all the material facts.

➤ **Whole transaction**

It must be done for whole transaction in fact; ratification of the part of a transaction operates as a ratification of the whole transaction.

➤ **Act on behalf of another person**

The acts done by a person (i.e. pretended agent) on behalf of another person (i.e. pretended principal) can only be ratified.

➤ **By the principal**

Ratification can be made by only such person for whom the act was done.

➤ **Existence of principal**

The principal must be in existence at the time when the act was done in his name

➤ **Contractual capacity**

The principal must have contractual capacity both at the time of entering into the contract and at the time of ratification.

➤ **Lawful acts.**

Only those acts which are lawful can be ratified. Void, illegal, or ultra vires acts cannot be ratified.

➤ **Acts within principal's power**

Ratification can be made only for such acts which principal had the power to do.

➤ **Communication**

Ratification must be communicated to the third party so as to bind him

➤ **Within reasonable time**

Ratification must be made within reasonable time of the act purported to be ratified.

31. KINDS OF AGENTS.**A. Based on Authority**

1. Special Agent	2. General Agent	3. Universal Agent
<p>(a) Appointed to perform a particular transaction, e.g. sale of a house property.</p> <p>(b) Agent has limited authority</p> <p>(c) Agent cannot bind Principal for acts other</p>	<p>(a) Appointed to do all acts connected with a particular trade, business or employment.</p> <p>(b) Authority is wide and continues till agency is terminated.</p>	<p>(a) Appointed to do all acts for the Principal.</p> <p>(b) Authority is unlimited</p> <p>(c) All acts of Agent bind his Principal provided that his acts are legal and agreeable as per law of land.</p>

than for which he is employed.	(c) Principal may limit his authority. (d) Principal is bound by all acts unless it is beyond authority of Agent.	
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B. Based on Nature of work

1. Commercial or Mercantile Agents	2. Non – Mercantile Agents.
(a) One who is authorised to sell goods or consign goods for the purpose of sale or to buy goods or to raise money on the security of goods. (b) Includes Banker, Factor, Auctioneer, Broker, Commission Agent, & Del Credere Agent.	(a) Not engaged in business of selling or buying goods, but act in their respective professional capacities. i.e. render professional services for their Principal (b) Includes Solicitors, Attorneys, C & F Agents, Insurance Agents, etc.

32. DUTIES OF AN AGENT

(Sec. 209 to 218)

1. To conduct the business in accordance with the directions given by the principal
2. To work with reasonable diligence, care and skill.
3. To render proper accounts to the principal on demand.
4. To communicate with his principal in case of difficulty and seek his instructions.
5. Not to deal on his own account unless all the material facts have been disclosed to the principal and consent of the principal has been obtained.
If the agent, without the knowledge of the principal, deals in the business of agency on his own account, the principal has the following rights:
 - (a) He may repudiate the transaction, if the agent dishonestly conceals any material facts or the dealings of the agent prove to be disadvantageous to him.
 - (b) He may claim from the agent the agency business other than the agreed remuneration.
6. Not to make any secret profit out of the agency business other than the agreed remuneration
7. To remit to the principal all the sums received in the principal's accounts in accordance with the terms and conditions of contract of agency.
8. Not to delegate authority or appoint sub – agent.
9. To protect and preserve the interest on behalf of the principal's representative in case of his death or insolvency of the principal.
10. Not to use information obtained in the course of the agency against the principal.

33. RIGHTS OF AN AGENT

(Sec. 217 to 225)

1. To retain money out of the sums received in agency business for advances made or expenses incurred and remuneration due to him.
2. To receive the agreed remuneration. If the remuneration is not fixed, then he has the right to recover such remuneration as is usual and customary in such business.
3. Right of lien on principal's goods, papers and other property until the amount due to him in respect of the same is paid.
4. An agent has the right to be indemnified by the principal against the consequences of all lawful acts done in exercise of the authority conferred on him.
5. An agent has the right to be indemnified by the principal against consequences of acts done in good faith that caused an injury to third person.

6. To claim compensation for injury caused because of principal's neglect or want of skill.

34. WHEN AN AGENT IS PERSONALLY LIABLE? (Sec. 230 and 231)

➤ **General Rule – No personal liability [Sec.230]**

In the absence of contract to contrary, an Agent cannot –

- (a) personally enforce contracts entered into by him, on behalf of his Principal,
- (b) be held personally liable for them.

This is because the Agent merely acts on behalf of his Principal. Thus, he enjoys immunity from being personally sued.

Exceptions, i.e. Agent personally as well as Joint & Severally Liable

The Agent is personally liable in the following cases –

1. **Foreign Principal [Sec.230]** : Where the contract is made by an Agent for the sale or purchase of goods for a merchant resident abroad.
2. **Undisclosed Principal [Sec.230]**: Where the Agent does not disclose the name of his Principal.
3. **Principal cannot be sued [Sec.230]**: Where the Principal, though disclosed, cannot be sued, e.g. Principal becoming of unsound mind, subsequent to appointment of agent.
4. **Acting for a Principal not in existence**: Where the Agent acts for a Principal who is not in existence at the time of making contracts, he shall be personally held liable e.g. contracts entered into by Promoters before incorporation of a Company are made in their personal capacity and hence personally liable.
5. **Agency coupled with interest [Sec.202]** : Where the Agent has an interest in the subject matter of agency.
6. **Agent guilty of Fraud [Sec.238]** : Where an Agent is guilty of fraud or misrepresentation in matters that are outside the scope of his authority, he is personally liable, and do not affect his Principal.
7. **Agent exceeds authority & act not ratified**: Where an Agent acts either without any authority or exceeds his authority, he shall be held personally liable when the principal does not ratify his acts.
8. **Agent receives or pays money**: Where an Agent receives or pays money by mistake or fraud to a third party, he shall be personally liable to such third party. Also he can personally sue the third party if the fraud or mistake is accountable to such third party.
9. **Express Agreement for personal liability**: Where an Agent expressly agrees to be personally bound.
10. **Execution of Contract in his own name**: Where an Agent executes a contract in his own name, without disclosing that he is acting as Agent for a Principal, he shall be personally liable, e.g. An Agent signs a Negotiable Instrument without making it clear that he is signing it as an Agent only, he shall be held personally liable on the same. He would be personally liable as Maker of P/N, even though he may be described as Agent.
11. **Trade custom or usage**: Where trade usage or custom makes an Agent personally liable.
12. **Agent with special interest**: An Agent with special interest or with a beneficial interest, e.g. a Factor or Auctioneer, can sue and be sued personally. [Subramanya vs Narayana]

13. Action against Agent or Principal [Sec 233] : Where the Agent is personally liable, a person dealing with him may hold - (a) either him or (b) his Principal or (c) both of them liable. The liability of Principal and Agent is “joint and several”.

14. Exclusive liability [Sec. 234]

<p>Where a person has made a contract with an Agent and –</p> <ul style="list-style-type: none"> • Induces such Agent to act upon it in the belief that only his principal would be held liable, • Induces the principal to act upon it in the belief that only his Agent would be held liable. 	<p>Such Third person cannot later on, shift the liability on to –</p> <ul style="list-style-type: none"> • The Agent, or • The principal, respectively.
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35. AGENCY COUPLED WITH INTEREST (Sec 202)

- When agency is created for securing some benefit to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.
- The interest should exist at the time of creation of agency. If the interest arises after the creation of agency then it would not be called as agency coupled with interest.
- Agency coupled with interest cannot be terminated to the prejudice of such interest.
- Agency coupled with interest does not terminate even on the death or insanity of the principal.
- Thus, such agency is irrevocable to the extent of such interest.

36. IRREVOCABLE AGENCY (Sec.202 and 204)

- **Agency coupled with interest**
Such agency cannot be terminated to the extend of such interest
- **Part exercise of authority by the agent**
Where the agent has partly exercised the authority, the principle cannot revoke the authority so far as regard such acts and obligation as arise from already done in the agency
- **Personal liability incurred by agent**
Where the agent has incurred personal liability, the agency is irrevocable

37. DELEGATION OF AUTHORITY (Sec.190)

- **General rule**
The general rule is that an agent cannot lawfully employ another act, which he has expressly or impliedly undertaken to perform personally.
- **Exceptions**
 - (a) There is a custom or usage of trade to that effect.
 - (b) Where power of the agent to delegate can be inferred from the conduct of the both the principle and the agent.
 - (c) When the principal is aware of the intention of the agent to appoint sub agent by the does not object to it.
 - (d) When principle permits appointment of a sub-agent.
 - (e) If the nature of the agency is such that the sub-agent is necessary.

- (f) Where the acts to be done is purely ministerial not involving confidence or use of discretion.
- (g) Where unforeseen emergencies arise rendering appointment of a sub-agent necessary.

38. LEGAL RELATIONSHIP BETWEEN THE PRINCIPLE AND SUB-AGENT AND AGENT (Sec.190, 192 and 193)

➤ If sub-agent is properly appointment

- (a) Principal is bound to the third parties for the acts of sub-agent.
- (b) The agent is responsible to the principal for the acts of sub-agent.
- (c) The sub-agent is responsible to the agent for the acts done by him.
- (d) The sub – agent is not responsible to the principle, except in case of fraud or willful wrong.

➤ If sub – agent is not properly appointed.

- (a) Principal is not bound to the third parties for the acts of sub – agent.
- (b) The agent is responsible to the principle and third parties for the acts of sub – agent.
- (c) The sub – agent is responsible to the agent for the acts done by him.
- (d) The sub – agent is not responsible to the principle.

39. LIABILITY OF PRINCIPAL TO THIRD PARTIES FOR THE ACTS OF AGENT (Sec. 226 to 228)

➤ Principal is liable for the acts of agent

- The principal is liable for all the acts of an agent which are lawful and within the scope of agent's authority.
- The contracts entered into by the agent on behalf of the principal have the same legal consequences as if these contracts were made by the principal himself.

➤ When agent exceeds his authority

Whether the acts done within the authority are separable from the acts done beyond authority.

If yes – The principal is not bound for excess acts done by the agent.

If no – The principal is not bound by the transaction and the principal can repudiate the whole transaction.

40. TERMINATION OF AGENCY (Sec.201 to 210)

A. By the acts of parties

➤ By agreement

The principal and the agent may mutually agree to terminate the agency, at anytime.

➤ By revocation

- When the agency is coupled with interest, the principal cannot revoke the agency to the prejudice of such interest.
- The principal can revoke the authority at anytime before, the authority has been exercised so as to bind the principal.
- The principal cannot revoke the authority given to his agent after the authority has been partly exercised.

- When agency is for fixed period, the principal must make compensation to the agent for premature revocation of agency without sufficient cause.
 - Revocation may be expressed or implied from the conduct of the principal
- **By the agent renouncing the business of agency**
- Renunciation may be expressed or implied from the conduct of the agent.
 - When agency is for fixed period, the agent must make compensation to the principal for premature renunciation of agency without sufficient cause.

B. By operation of law

1. Completion of business of agency
2. Death or insanity of the principal or agent
3. Where the principal or the agent, being a company is dissolved
4. Destruction of subject matter of agency
5. Principal becoming insolvent
6. Expiration of period where agency was for a fixed period.