CONTRACT LAW

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Class-room live lectures edited, enlarged and updated

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CONTRACT ACT

[Indian Contract Act,1872]

INTRODUCTION

The contract act was enacted in 1872. Prior to this the Hindus and the muslims in India had their own laws and usages. The impact of the various charters of the 17th and 18th centuries, the introduction of English Common law and Statutes, led to many problems. It is to obviate these that the Indian Contract Act was enacted.

The Contract Act deals with the basic essentials of a contract and classifies it into valid, void and voidable contracts. Sns. 1 to 75 are to be read in a sequence and each principle is to be studied with points and the cases.

Much attention should be given to the illustrations and examples.

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SYLLABUS

: The Indian Contract Act: Sns. 1 to 74

1. Definition of "Promise", "Consideration" etc. (Sn.2)
2. Communication, Acceptance and Revocation of proposals (Sn. 3 to 9)
3. Valid, voidable and void agreements (Sns. 10 to 30)
4. Contingent contracts (Sns. 31 to 36)
5. Performance of contracts (Sns. 37 to 67)
6. Quasi-contracts (Sns. 68 to 72)
7. Breach of contract (Sn. 73 and 74).

QUESTIONS BANK

1. a) All contracts are agreements, but all agreements are not contracts, explain b) How is revocation made ?
2. a) What is "Free consent" ?

   b) Explain "Coercion" and "Undue influence"

   c) Explain "Fraud" and Misrepresentation"
3. a) Who are competent to enter into contract ?

   b) Discuss with cases, the law relating to the validity of contracts entered into by a minor.
4. a) "An agreement made without consideration is void" Explain and refer to exceptions.

   b) "Contracts opposed to public policy are void" Explain.
5. "Agreement in restraint of legal proceedings are void" Discuss.
6. What is a Wagering Contract ? Explain the law relating to agreements by way of wager.
7. Summarise the provisions governing contingent contracts.
8. Discuss "Anticipatory breach of contract'.
9. Explain the rules relating to devolution of joint rights. Refer to Indian and English Law.
10. a) "An agreement to do an impossible act is void" Explain

    b) Discuss the doctrine of "Frustration of Contract". Refer to Cases.
11. State and explain the law relating to "appropriation of payments".
12. Discuss the doctrine of quasi-contracts OR Discuss the various relations, resembling those created by Contract Act.
13. Distinguish between 'Penalty' and 'Liquidated' damages. Refer to Hadley V. Buxandale and explain the rules relating to award of damages.
14. Write shorts notes on :

    1) General and standing offers

2) Valid, void and voidable contracts
3) Tender
4) Novatio
5) Quantum merit
6) Maintenance and champerty
7) Reciprocal promises
8) Executed, executory and past consideration
9) Privity of contract
10) Contract in restraint of marriage
11) Contract in restraint of trade
12) Discharge of contract
13) Time as essence of contract
14) Effect of mistake of fact or law on contract
15) Invitation to treat.

15. State the facts & the decision in

I.Carlill V Smoke Ball Company
2. Bolfor.VBolfor
3. Dickinson V Dodds
4. Mohori Bibi V Dharmadas Ghosh
5. All card V Skinner 6. Cundy V Lindsay
7. Deny V Peek 8. Hadley V Buxandale

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CHAPTER 1

CONTRACTS, OFFER, ACCEPTANCE AND REVOCATION

[Sections [Sns] refer to sections of Contract Act]

Ch. 1-1 Contract-

Definition and Essentials :

Sn.2(h),Contract Act defines a contract. According to it, a contract is an agreement enforceable by law. It is thus an agreement between two or more persons, to do or not to do some act. In fact, every promise, forming the consideration for each other, is an agreement. If the agreement is not enforceable, the contract is void. Hence**, all contracts are agreements, but not all agreements, contracts.**

Essentials : Sn.10. Contract Act

The essentials of a valid contract are : i) Consent of the parties i.e., Consensus ad idem ii) Legal capacity or competence of the parties iii) Consideration and iv) Lawful object and lawful consideration 1)

i) **Consent:**

It is defined in Sn. 13 : Two or more persons are said to give consent, when they agree on the same thing in the same sense i.e., consensus ad idem. It is not free, when there is coercion, undue influence, fraud or misrepresentation. In such a case, the contract becomes voidable. But, when there is no consent, the contract becomes void.

ii) Legal capacity :

Sec. 11 of the Contract act, states that the parties to the contract must be competent to contract. There is no capacity, when a party is a minor or insane, an idiot or when he is disqualified according to any special law to which he is subject.

A contract with a minor is void ab initio.[from the beginning] A person below 18 years of age is a minor (21 years for a ward under a guardian). The leading case is **Mohori Bibi V. Dharmadas Ghosh.**

iii) Consideration :

An agreement without consideration is void. (Sn. 25 Contract Act).

Consideration is defined in Sn. 2(d). When at the desire of the promisor, the promisee or any other person has done or abstains from doing, or does or abstains from doing, or promises to do or abstains from doing, something, such act or abstinence or promise, is called a consideration for the promise.

1. The rule is "**ex nudo pacto, non oritur actio**" [On naked pact (contract),no action arises].i.,e. without consideration, no action arises. Consideration must be clear, specific and not illusory.

It may be inadequate, if parties agree to the contract. By that itself contract will not become void.

But, the general rule is "no consideration, no contract". But there are exceptions.

1. When agreement is made on account of natural love and affection (e.g.Gift by father to daughter), it should be in writing and to be registered.

2. Compensation, promised for services rendered.

3. Past consideration is good consideration,

iv) **Lawful object :**

According to Sn.23 of the Contract Act, the consideration or object of the agreement must be lawful otherwise the contract is void.

The consideration or object is not lawful :

If i) it is forbidden by law

ii) It is of such a nature that if permitted it would defeat the provision of any law

iii) it is fraudulent

vi) it involves or implies injury to the person or property of another

v) it is immoral or opposed to public policy.

e.g. (1) A, B & C agree to divide their earnings got by fraud. (2) lease agreement of a house for immoral purposes.

Ch.1-2. Offer and invitation to treat: Sn. 2(a) :

Offer or proposal is defined in Sn.2(a) of the contract act.

"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 (offer).

The person who makes the proposal is called a "promisor", the person accepting the proposal is called a promisee.

When the promisee gives his assent, it becomes "Acceptance", (i) The offer must be definite and give rise to legal consequences.

Invitation to treat:

According to Anson, as offer is different from an "invitation to treat". A catalogue of goods for sale is not an offer but only an invitation to offer. A shopkeeper who keeps his goods in the shop window with label of price attached, is making an invitation to offer. Similarly, a mere reply to a letter quoting prices will not constitute a proposal to sell.

(a) Harvey V. Facey :

H telegraphed, "Will you sell us Whiteacre? Telegraph lowest price". F replied : "Lowest price £ 900". H telegraphed "We agree to buy for £ 900 asked by you".

Held : There is only an offer, by H to buy. It is for F to accept or not. Here, F has not accepted. Hence, there was no acceptance.

(b) **Balfor V. Balfor :**

Husband H, promised to send £ 23 a month to his wife W, as long as she remained away from him.

Held : W cannot sue. The promise of H was never intended to give rise to legal consequences.

(ii) **General & Specific offer :**

An offer may be general or specific. It is a specific offer when it is made to a definite individual or to a definite group of individuals.

It is, considered as a General offer when it is made to an unascertained group of individuals i.e., to the public at large. Here, offer can be accepted by any individual. Hence, if a reward is fixed, any person who fulfils the conditions may claim the award.

The leading case is *Carlill Vs. Smoke Ball Company.*

In this case, the defendant advertised that they would pay 100 pounds to anyone who gets influenza, after using their smoke-ball. This smoke-ball is to treat the nostrils with a kind of carbolic acid snuff. This is to be used as per directions of the defendant company. The company had deposited money in a bank to show their sincerity. Carlill got influenza after using it. She claimed the reward. The court held that the company was liable to she was entitled to the reward.

Jude Bowen held, the advertisement was not an invitation to offer, but a general offer which was accepted by the lady and hence, it became a binding contract. She had used on the faith of the advertisement. Her acceptance of the smoke-ball needs no communication to defendant. Her performance that is by using as per direction was sufficient acceptance.This case shows that offer, if it is to be capable of acceptance, must have a promise by offeror that he will bind himself, if conditions are followed.

Similarly, Railway time-table is an invitation to offer. **Ch.1-3.**

Acceptance of offer :

According to Anson "An acceptance is to an offer what a lighted match is to a train of gun powder". This means when the offer is accepted it becomes a contract.

According to Contract Act Sn.2(b): When the person to whom, the proposal is made signifies his assent thereto, the proposal is said to be

accepted.

A proposal when accepted becomes a promise.

According to Sn.7, in order to convert a proposal into a promise, the acceptance must be :

i) Absolute and unqualified

ii) Be expressed in some usual and reasonable manner.

But if a particular mode is prescribed, it must be accepted in that mode. Otherwise, the proposer may insist on such a mode. If he does not insist, he is said to have accepted.

Acceptance should be absolute :

Hyde V. Wrench : W offered to sell his farm to H for £ 1000. H said he would buy for £ 950. W did not agree, later H agreed for £ 1000. Question was whatever there was acceptance.

Held : there was no acceptance, as it was qualified, i.e., to buy for £ 950.

Communication of a proposal when complete :

i) It is complete, when it comes to the knowledge of the person to whom it is made.

ii) The communication of an acceptance is complete.

as against the proposer, when it is in communication to him, so as to be out of the power of the acceptor.

a) as against the acceptor, when it comes to the knowledge of the proposer.

i) A proposes by letter to sell his house to B for Rs.50,000/-The communication is complete when B receives it.

ii) B accepts A's proposal by a letter by post.

The communication of acceptance is complete, as against A, when the letter is posted, and as against B, when A receives the letter.

Ch.1-4. Revocation of proposal and acceptance : Sn.6

The communication of revocation is complete :

i) as against the person who makes the revocation, when it is put into communication to the person to whom it is made, so as to be out of the power of the person who makes it.

ii) as against the person, to whom it is made, when it comes to his knowledge.

e.g. A revokes his proposal to sell his house to B, by a telegram. The revocation is complete as against A, when the telegram is despatched.

It is complete as against B, when B receives it.

B revokes his acceptance by telegram. B's revocation is complete as

against B, when the telegram is despatched, and as against A, when it reaches him.

Revocation of a proposal:

1) By issuing notice of revocation by the proposer to the other party.

2) By efflux of time prescribed.

If no time is prescribed, by the lapse of a reasonable time.

3) By the failure of the acceptor to fulfil some condition precedent (prior condition).

4) By the death or insanity of the proposer.

Leading case : *Dickinson V. Dodds.*

On 10th June, Dodds made an offer to sell his dwelling house for £ 800 to Dickinson. "The offer was left open upto 9 a.m. 12th June". But, on ll th itself he contracted to sell the house to 'A'. Dickinson handed over his letter of acceptance before 9 a.m. on 12th. Dodd said "you are too late. I have sold my property".

Dickinson sued Dodds.

Held, there was no contract.

Comment: Anson has doubted this decision.

This is no longer good law in India. In India, a proposal is revoked by notice of revocation by the proposer to the other party, or on the efflux of time if time is prescribed , or by lapse of a reasonable time if no time is fixed.

Ch.1.5. Stranger to a contract :

A stranger is not a party to the contract and hence cannot sue.

Consideration is defined in Sn. 2(d).

When at the desire of the promisor, the promisee or any other person had done something ...such act ....is consideration for the promise.

Hence, consideration may flow from the promisee or any other person. Hence, the question is whether a stranger can sue ?

Tweddle V. Atkinson :

Here H & W were husband and wife. H's father and W's father agreed to pay money to H and that H could sue. When both parties to agreement died, H sued W's father's executors for the money. Held

that H was stranger and hence, cannot sue.

Hence, it is a settled law that a stranger cannot sue.

Exceptions :

1. When a contract confers benefit on third party, such a benefi

ciary, as in trust may sue.

2. Trust in favour of a stranger is valid.

3. When money is due under a family arrangement or partition, to a stranger. In the above circumstances, stranger can sue.

Ch.1.6. Valid, void, voidable and unenforceable contracts :

a) Valid contract:

It is an agreement which has all the requisites of a contract.

i) Free consent ii) Consideration iii) Lawful object iv) Legal capacity of the parties. Hence, such a contract is valid and is enforceable in a court of law (Refer. Ch.1.1).

b) Void contract :

It is an agreement without any legal effect. It is a nullity. It is not enforceable in a court of law. An agreement not enforceable by law is void.

Eg. 1) Contract with a minor Sn.ll.

2) Contract without consideration Sn. 25.

3) Contract with object unlawful Sn. 23

4) Wagering contract Sn. 30.

5) Contract in restraint of trade Sn. 27. or in restraint of marriage. Sn. 26.

c) Voidable contract: This is an agreement which is enforce able by law at the option of one of the parties thereto but not at the option of the other.

Voidable contract is a valid contract until it is set aside by the court. The person who has the right to rescind must do so within a reasonable time, ie., 3 years.

Any agreement made under undue influence, coercion, fraud, misrepresentation is voidable. Hence, when the court sets aside the contract the contract becomes void.

Undue influence **Add ch. 5.1.** Fraud Add

Ch. 5.2. Misrepresentation : Add Ch. 5.3.

Coercion Add Ch. 5.4. **d) Unenforceable**

contract:

It is a contract which is otherwise valid in all respects but cannot be enforced on account of some technical defects like insufficient stamps, not written in a particular form, etc.

CHAPTER 2

CAPACITY

Ch.2.1. Minors contract:

Section 11 of the contract act, states that the parties to the contract must be competent to contract is that, the two parties must not be "incapax".

There is no capacity when a party is a minor or insane, an idiot or when he is disqualified according to any special law, to which he is subject.

i) **Contract entered into by a minor is void ab-initio:**

A person who has not completed 18 years of age is a minor and in the case of a ward he is a minor until he attains thee age of 21 years.

The leading case on this point is **Mohori Bibi Vs. Dharmadas Ghosh (1903).**

D. Dharmadas a minor executed a mortgage for a sum of Rs.20,000/- out of which the money lender M had paid him only Rs.8,000/-. M had notice of the minority of D, D sued to set aside the mortgage. It was held by privy council that the contract was void ab-initio and no question of refunding moneys arose in such a transaction.

This has been followed in a number of cases. Hence it is settled that a Minor's contract is void from the beginning.

The aim of the Contract Act is to protect the interests of a minor, and to save him from the transactions in which the other party may have taken advantage of the minority of the person. It has been held that if a minor performs his promise and delivers goods to another party, the minor has got a right to recover the price through

his guardian. The minor is entitled to plead his minority and is not estopped under the provisions of the evidence act (Sn.115).

This is settled **in SadiqAli Khan V.JaiKishore;** a deed entered into by a minor was held a nullity. False representation as to age, could not stop him from pleading his minority.

ii) Necessities supplied to a minor :

According to Sn. 68 of the contract act if necessaries are supplied to the minor then the person who supplies is entitled to be reimbursed of the amounts from the property of the minor. The minor is not personally liable.

Leading case : **Rider Vs. Wombwell.**

Supplying golden buttons etc., to a minor was not a "necessity").

iii) Estoppel, not applicable to minor :

Even if a minor falsely represents himself to be a major and enters into a contract, the contract is void and unenforceable. The minor may plead his minority in the suit against him. The rule of Estoppel that he shall not deny his representation as a major, is not applicable to him. This does not entitle

him to cheat persons and gain some advantage. If he cheats a trader and gains property, he will be liable to restore it to the trader.

iv) Ratification :

As the minor's agreement is void ab initio, the minor cannot ratify and make the contract valid after attaining majority.

There is no specific performance against the minor as the agreement is void ab initio.

Ch. 2-2. **Insanity, Idiocy :**

Incapacity may arise as a result of insanity or idiocy. The rule in such a case is that a contract made by an. insane or an idiot is void ab-initio. But a lunatic who is usually of sound mind but occasionally of unsound mind may make a valid contract, during his lucid intervals. Sn. 12;

The test is, such a person must be capable of understanding the contract, and of forming a rational judgement as to his interests. "A", a patient in a Mental Hospital, who is at intervals of sound mind, may contract when he is of sound mind.

Drunkenness:

Drunkenness is also considered as an incapacity and contract made by a drunken person is void. Hence a man who **is so drunk that he cannot understand** the contract or who cannot form rational judgement cannot make a valid contract.

Other incapacities : Incapacity may arise as a result of the status of persons as in the case of foreign sovereigns, Ambassadors, enemy alients etc.

CHAPTER 3
FREE CONSENT

Ch.3. Free consent:

One essential requirement of a valid contract is that it must have free consent. The parties must have consensus ad idem, that is they must agree upon the same thing in the same sense. Consent is not free if it is caused by Coercion ; undue influence, fraud or misrepresentation or mutual mistake. That is, but for the existence of coercion, undue influence etc., consent would not have been given. For a valid contract there must be free consent. If it is affected as in coercion, undue influence etc., the contract becomes voidable. When there is no consent the contract is void.

'Consent' is defined in Sn.13. Two or more persons are said to give consent when they agree upon the same thing in the same sense i.e., consensus ad idem.

Legal consequences :

i) If there is a mistake of fact by both the parties, then there is no consent, and, hence the contract is void. (Sn. 20).

A agrees to sell his horse to B. But, at the time of sale the horse was dead. Both did not know this fact The contract is void.

ii) If consent is obtained by fraud, coercion or misrepresentation, the contract is voidable, at the option of the party affected "A". A may insist that he may be put in the position in which he would have been put, if there was no fraud or misrepre-sentation.etc.

ii) When there is no consent, the contract is void ab initio. According to Sn. 1 : "all agreements are contracts, if they are made by the free consent of the parties". Hence, free consent is one of the essentials of a contract.

CHAPTER 4

VOIDABLE CONTRACTS

Ch.4-1. Undue influence : (Sn. 16) :

An agreement is said to be induced by undue influence, if the relation subsisting between the parties is such that, one of them at the time of the agreement.

a) was in a position to dominate the will of the other party, and

b) that he has used that position to obtain an unfair advantage for him.

There is a presumption of undue influence when :

A person who stands in a fiduciary relation to the other, or a person who holds a real or apparent authority over the other or a person who contracts with another whose mind is enfeebled by age, illness, physical or mental distress.

In such circumstances if the transaction is unconscionable, the onus of proving that the contract was not under undue influence is on the dominating person.

There is a presumption of undue influence in the following relationships parent and child, guardian and ward ; trustee and beneficiary, spiritual master and pupil, Doctor and patient etc. The section applies to every case where influence is acquired and abused and where confidence is reposed and betrayed.

Eg. i) A advances money to his son B during his minority. When B attains majority, A exercising his parental influence gets a bond for sums excessive than advanced. A has employed undue influence.

iii) D a doctor induces B his patient to pay a very heavy sum for his

services. D has used undue influence.)

InAllcard Vs. Skinner. P. joined the sisterhood of a church and was under the spiritual control of D, a lady superior.

P had advanced a total of £ 7000 at various points of time, to D. 6 years after leaving sisterhood, she sued D to recover the amounts.

Held that advances were made under pressure ; (undue influence) but the suit was barred by time.

Legal consequences : The contract vitiated by undue influence is voidable and the party affected may sue to get the declaration that the contract is void.

A forges B's signature. B, threatening to prosecute A, gets a bond from A for Rs.2000/- The bond is voidable, at the option of A.

Ch. 4-2. Fraud :

Section 17 contract act deals with fraud with reference to contracts.

In fraud : 1) There must be an intention to deceive

2) The act may be by the party to the contract or with his connivance

3) There must be suggestion falsi. or

4. Active concealment of fact (suppressio vari). or

5) A false promise or

6) Any act or omission which may amount to a fraud according to law.

If a party has entered into a contract in which any one of the above elements can be shown, then it is a contract which becomes voidable due to fraud.

Leading case is **Derry Vs. Peek.**

In this case, the defendants issued a prospectus stating that the company had the right to use steam power instead of horse, on their tram way. The directors had believed that the Board's permission was a mere formality, but the Board refused to give permission to the company to use steam power. The company was wound up. The plaintiff sued for "deceit". It was held that there was no fraud as there was no intention to mislead. It was an honest mistake on the part of the company.

This is no longer good law today. Today according to the Companies Act, the directors are liable for negligent misstatements.

Mere silence will not amount to fraud unless keeping silence itself amounts to fraud under the circumstances.

Eg. 1. A sells by auction to B a horse which A knows to be unsound, B buys the horse and A says nothing about it. This is not a fraud.

2. B says to A if you do not deny, I presume that the horse is

sound. A says nothing. Mere silence amounts to speech.

3. A and B are traders. A enters into a contract with B ; B agrees to sell at a particular price. But, the market price had gone up which A knew. B did not know it. There is no fraud. Mere non-disclosure is not fraud.

Ch. 4-3. Misrepresentation :

Section 18. contract act defines misrepresentation.

It means and includes : i) An unwarranted positive assertion of that, as not true, even though he believes it to be true.

ii) Committing breach of duty to mislead another person.

iii) Causing a party to the contract to make a mistake as to the subject matter of the agreement.

Eg : A induces B to believe that C's factory is manufacturing 500 metric tonnes of Indigo annually thereby he induces B to buy the factory. This is misrepresentation and if B buys, he may avoid the contract as it is voidable.

Mis-representation may be of two kinds :

1. it is innocent misrepresentation when there is an honest mistake on the part of the person making representation.

2. Wilful representation (Fraud). Here there is a willful falsehood with an intention to deceive. This amounts to fraud (Section 17).

Misrepresentation	**Fraud**
1. There is no intention to deceive.	1. There is an intention to deceive
2: Contract may be rescinded	2. Can be rescinded This is also a tort of deceit. Can be sued for tortious liability
3. The defendant may plead that the plaintiff could have found the truth with ordinary deligence.	3. There is deception. Hence deft, cannot plead his innocence,

Breach'of duty : There must be some relationship between the parties e.g. buyer and seller, landlord and tenant, banker and client etc. The misrepresentation must be material.

Bannarman V. White *:* A agreed to sell to B, hops which had been grown by A. B's condition was that no sulphur should have been used while growing hops. A had agreed. But, out of 300 acres, in 5 acres sulphur had been used. Held this was a misrepresentation and B may avoid the contract.

4.4. Coercion : Sn. 15

Coercion is the committing or threatening to commit, any act

forbidden by the Indian Penal Code, or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Contract made under coercion is voidable at the option of the party whose consent was so obtained. The reason is that the consent is not free as defined in Sn. 14. According to this, if consent is caused by coercion, undue influence, fraud, or misrepresentation then the contract is voidable at the option of the party whose consent is so obtained.

The essentials of coercion are :

1) There must be a commission of (or threatening to commit) an offence under I.P.C.

2) There must also be the unlawful detaining (or threatening to detain) any property.

Examples : A obtains B's consent at gun point;

A threatens to cause grievous hurt and obtains B 's consent for an agreement;

A threatens to burn down, valuable documents of B, and obtains B's consent.

InAmmiraju Vs. Seshamma, H, the husband by creating a threat to commit suicide, induced his wife W and son to give their properties by a release deed to B, the brother of H. it was held that threat to commit suicide amounted to coercion, and hence the contract was voidable.

In *Ashley Vs. Reynolds* P pledged his plate with B and took a loan of 20 pounds. When P went to B to take back his plate B demanded 10 pounds interest as otherwise he would not deliver. P paid 20 pounds and also 10 pounds, and took delivery. P sued d. Held, D was liable as he had extracted extra money.

Coercion and undue influence distinguished :

Coercion (Sn. 15)	**Undue influence (Sn.16)**
1. Consent is obtained by committing an offence or threatening to commit or there may be unlawful detaining to secure consent eg. Getting consent at gun-point threatening to kill, etc	Consent is obtained by dominating the will of the other person, taking advantage of that person's position.
2. Mainly this is physical	Mainly mental & moral

Ch. 4.5. Mistake of fact or law in a contract:

One essential condition of a contract is that there must be free consent.

Consensus ad idem i.e., parties agreeing the same thing in the same sense. This free consent is affected in case of coercion, fraud, misrepresentation and hence, the contract becomes voidable.

In respect of "mistake" the Contract Act has made some provisions (Sns. 20, 21 & 22).

i) Mistake by both the parties : (Sn.20)

When there is a mistake of fact essential to the agreement, the agreement is void.

This happens when there is a mistake as to the existence or identification of the subject matter.

A and B agreed for the sale and purchase of India Corn, on board a ship which was bound for England. Unknown to A and B, the corn had been damaged and discharged, even before the agreement. Held : contract "void", as there was mistake of fact as to the existence of corn.

A agreed to sell and B agreed to buy 125 bales of cotton, which was to arrive by a ship called "Peerless". Infact, there were two vessels of the same name of sail from Bombay : One in October and another in December. Held, there was no consent and hence no contract.

ii) **Mistake by one party** : When there is a mistake of fact by one of the parties, the contract is valid. It is neither invalid nor voidable. Hence, the party under a mistake notion cannot escape the liability

There are

some xceptions :

1) If there is a unilateral mistake as to the nature of the contract, the contract is void

e.g. an old illiterate man was made to sign a bill of exchange, by falsely representing it was a guarantee. When he was sued, the court held that there was error in consent, and hence, the contract was void.

2) Mistake in the identify of persons :

If A enters into a contract with B, believing him to be B, but it turns out that he was C, the contract is void.

Cundy V. Lindsay :

B, by imitating the signature of a reputed firm, induced X to supply goods on credit. B later sold the goods to D. X sued D to recover the goods.

Held, X never intended to contract with B. Hence, the innocent buyer from B does not get a title. Hence, X could recover the goods from D.

iii) Mistake of Law : (Sn. 21) :

The general rule is 'Ignorantia juris non excusat' (Ignorance of law is no excuse). Hence, if a contract is made with a mistake as to the existence of a law, the contract is valid, (and so not voidable).

In case of mistake of foreign law, it is treated as a mistake of fact. Hence, the rule in Sn. 20, applies.

CHAPTER 5

CONSIDERATION

Ch. 5.1. Consideration : Sn. 25

The legal maxim "Ex nudo pacto non oritur actio", means "Agreement without consideration is void". This principle is embodied in Sn. 25 contract act.

1. Section 25 declares that an agreement made without consideration is vod. Sn. 2 Cl. (d) defines consideration.

When at the desire of the promisor, the promisee or any other person has done or abstains from doing, or does or abstains from doing, or promises to do or abstains from doing, something, such act or abstinence or promise is called a consideration for the promise.

1. A promises for no consideration to give to B, Rs.1,000/- this is a void agreement.

2. A agrees to sell his house for Rs.50000/- to B. For A's prom ise the consideration is Rs.50000/- and for B's promise the consideration is the house.

Consideration must be clear, specific and not illusory. The rule is "no consideration, no contract". The consideration may be inadequate if the parties agree. Consideration should not be illegal, immoral or opposed to public policy.

The basis of all contractual obligations, is consideration and without consi-deration, the contract becomes void and unenforceable in the courts.

Section 25 provides for certain exceptions :

i) If an agreement is made on account of natural love and affection between parties related to each other, then the agreement is valid only if it is expressed in writing and registered duly. Gifts are valid under this section.

Ex : A for natural love and affection to give his son Rs.5000/-duly executes a document (Gift deed) and registers it. This is a contract.

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ii) Compensation for voluntary service done by one person to another. In such a case, promise to compensate wholly or in part for service done is a contract valid and enforceable.

Ex : A supports B's infant son, B promises to pay A's expenses. This is a contract.

iii) A promise to pay a time barred debt is valid if it is made in writing and signed by the debtor.

Ex : A owes B Rs.1000/- But the debt is barred by limitation. A signs a written promise to pay B Rs. 500/- on account of the debt. This is a contract.

3. According to English law past consideration is no consi deration at all. A promise to provide maintenance for past illicit cohabitation is void according to English law. But according to Indian law past consideration is a good consideration under particular circumstances.

A promise made by D, on account of past cohabitation with P, was held valid. Namperumal V. Veera-perumal. However, if the cohabitation amounts to adultery, the consideration is illegal and hence, the contract is void.

4. Section 25 provides that if the consent is freely given then inadequacy of consideration will not make the contract void. But the court may take into consideration the inadequacy .to find out whether the consent was freely given.

Leading cases are : 1. Beswick Vs. Beswick

2. Kenney Vs. Brown

3. Thomas Vs. Thomas

In Thomas Vs. Thomas there was an agreement to pay pound one per year as annual rent for a big house. Though this rent was nominal and inadequate, by itself it did not make the contract invalid.

5. Consideration must be lawful:

Section 23 provides that if the consideration is unlawful the agreement is void. It is unlawful when it is forbidden by law or it is of such a nature that if permitted it would defeat the provisions of any law, or, is fraudulent or involves injury to a person or property or when the court regards the transaction as immoral or opposed to public policy.

Eg. 1 A, B and C agreed to divide the amount got by fraud. This is void and unlawful.

2. A promises to B to pay Rs.1,000/- if B provides A a job in Govt. service. This is void.

3. A leases out his house for immoral purpose. The lease is void.

Ch. 5.2. **Executory and Executed consideration :**

(Past, present and prospective consideration).

If the consideration is past or present, it is called executed consideration. But, if the consideration consists of a promise to be done in future, it is called Executory Considera-tion.

In executed consideration, one party is yet to perform his part of the promise but, in executory consideration, both the parties are to perform their promises.

A places an order for 500 bags of rice with B. A, is to pay when goods are delivered. Rice is in the form of a heap. This is executory. B must fill to

bags, weigh, stitch, etc., and appropriate to the contract, by giving notice to A. Goods are delivered. The value is not paid. This is executed contract. B has done his job. A is yet to pay.

Ch. 5.2. **Agreement in restraint of Marriage :**

Sn. 26 of the contract act states that every agreement in restraint of marriage is void. The exception is the case of a minor.

The objective of the legislature is that husband and wife should live together by selecting each other voluntarily.

The consideration must be love, affection and welfare and not 'money consideration'.

The leading case is **Lowe V Peers.**

In this case, there was a promise to the effect that P would not marry anybody except Catherine. P had also agreed that he would pay 2000 pounds, is he marries somebody else. In fact, P married B, Catherine sued P. Held, there was a restraint on marriage and hence, the contract was void.

'Marriage Brokerage' contracts are also void. In Venkatakrishna V. Venkatachalam, a sum of money was agreed to be paid to the father in consideration of his giving his daughter in marriage. The Madras High Court held, that this amounted to "brokerage" of (Commission for) marriage and hence void.

Sn. 7 of the Dowry prohibition act 1961 has prohibited such offers and has made taking or giving a dowry an offence.

Similarly, an agreement to separate husband and wife is void. An agreement by a husband to marry K, after the death of his wife W, is also bad and void. These are opposed to public policy.

Ch. 5.3. Agreement in restraint of trade :

Contract Act Sn. 27, states that every agreement in restraint of lawful trade, profession or business of any kind is void to that extent.

One exception is provided when the goodwill of a business is sold, conditions may be imposed to restrain doing any similar business within certain specified local limits.

This limit must be reasonable, depending on the nature of the business. The restraint should be in no way injurious to public interest. The test of reasonableness is applied by courts in England.

Nordenfelt V. M. Nordenfelt Co.

N sold his business of manufacturing guns and ammunition to M for a

sum and agreed that for 5 years, he would not carry a similar business or any other to compete with that business. Held, that the restraint was reasonable under the circumstances of the case.

Agreement to sell goods at a particular rate fixed by the company is not a restraint on trade. Combination by traders to fix up the selling price of ice, is valid.

Monopolies and Restrictive Trade Practices Act (MRTP Act) aims at declaring as offences acts which restrict or distort certain trade practices.

Ch.5.4. Agreement in restraint of legal proceedings. Sn. 28.

Every agreement which absolutely restricts any party his right to move the court, is void. Similarly, restricting the time limit to enforce is also void. Any agreement which purports to oust the jurisdiction of the court is void. Further, any time limit in violation of the limitation act is also void. For pronote the time is 3 years. Hence, agreeing for 6 years to sue on a pronote is void.

Exception : Any agreement to settle disputes by arbitration is valid. Similarly, any contract to recover only the award of the arbitrator is valid.

An agreement between the parties, that the suit shall be filed in a particular place is valid. A in Calcutta and B in Mysore agree that any dispute should be settled in the courts of Calcutta. This is valid.

CHAPTER 6

WAGERING AND CONTINGENT CONTRACTS

Ch. 6.1. Wagering contract:

Section 30 of the contract act declares that agreements by way of Wager are void. Hence no suit can be entertained in a court for the recovery of any Wager amounts won by a party, or to recover from another person to whom the amounts are entrusted (Stake holder).

According **to Anson,** "it is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.

1. Wager means a bet. The subject matter of bet may be anything. Generally it is a game of chance wherein there is either gain or loss but the result wholly depends on an uncertain event. In a Wager, money is payable by one person to another on the happening of an uncertain event. Carlill case and PannalaPs case are the leading cases.

2. ' Important features of Wagering contract.

i) Parties do not know how the event happens or does not happen. They gamble on the uncertain event. Their aim is not to buy or sell goods, but only to exchange money and hence such agreements are void.

ii) There is no real consideration. There is only a stake of a sum of money.

iii) Mere speculation is not wager. .The speculation is with reference to raise or fall in the market. Speculated transactions are quite common in Gold, Silver, Stocks etc. Such contracts are valid.

Life Insurance Contracts have some resemblances of wagering. But they will relate to an event. Insurance is a contract of indemnity. In order to have a valid insurance contract the insured person must have "insurable interest"' in the insurance.

Exceptions :

i) Any subscriptions or contribution made towards any prize or sum of money of value of Rs.500/- and above to be awarded to the winner of any horse-race are valid.

ii) Share market transactions, prize and other competitions involving skill. (Illustrated weekly case) are exceptions.

iii) This section does not apply to section 294 (A) of I.P.C. (keeping a lottery house is an offence, as per this section.

Ch. 6.2. Wagering and insurance contract:

Wagering contract is void (Sn.30 Contract Act): It is an aleatory contract. It is an agreement to pay money or money's worth on the happening of a specified uncertain event (Anson). The parties have no other interest in the contract than the stake or sum of money which one party may lose. Hence there is no real consideration. The essence is that one party will gain or incur loss depending on the event.

Contract of insurance is also an aleatory contract, like a wager contract but there are main differences; •

(1) A wager contract is void and unenforcable but a contract of insurance is not void & hence enforcable.

(2) The parties do not intend to do or perform the contract in a wager, but pay only the difference.

(3) A wager can be inferred from the circumstance. Classical instances are agreement such as "bets" made by parties.

(4) In a contract of insurance, the risk is evaluated in advance and the payment is made by insurer when the contingency happens. Expecting life and accident insurance, in marine, fire etc.

Insurances, insurer contracts to indemnify the assured of what he may lose. The risk i.e. death in life-insurance, is certain though the future date is uncertain. There is an element of investment & protecttion.
Payment is made on death of the assured or on attaining a definite age as per the policy.

5. The stake of money should come from the parties to the wagerring agreement. If the subscribers are outsiders there is no wager.
A & B, agreed for a wrestling match & provided that if a party fails to appear

on the fixed day for the match Rs.500/- was to be forfeited from gate collection. A failed & B sued. Held the gate money was paid by the public & not by A & B. Hence not a wager.

6. The distinction depends on the intention of the parties. In fact insurance is considered as a social device where large number of individuals equitably contribute and reduce or eliminate the economic loss of the members of that group. It is even praised as a prudent man's device to make provisions against loss or inevitable contingencies, or misfortune. A wager has none of these devices.

Thus the contract of insurance is different from a contract of wager.

6.3. Contingent contract: (Conditional contract)

It is a contract to do or not to do something if some event collateral to such contract, does or does not happen.

A contracts with B to pay Rs.50,000/- if C's house is burnt. This is a contingent contract (e.g. Fire Insurance Agreement).

The contract contains a contingent event which may be within the power of either party or both or none. The event is not the mere will of the promisors. All insurance agreements are contingent contracts.

i) A contingent contract becomes enforceable on the happening of an uncertain future event. If it is impossible the contract becomes void.

a) A agrees to buy B's house on the death of C. The contract is enforceable only when C dies.

b) A offers his house to B at a specified price. A agrees to sell to C, the house, on B refusing to buy. Contract cannot be enforced until B refuses.

c) A contracts to pay Rs.5000/- to B, if B marries C. C marries D. The contract becomes void.

ii) A contingent contract on an event not happening, becomes enforceable, when event becomes impossible and not before.

A contracts to pay B Rs.50 lakhs, if the ship does not return. The ship is sunk. The contract can be enforced when the ship is sunk. (Marine Insurance agreements belong to this type).

iii) If the contingent event is dependent on the act of a person at an unspecified time, the event becomes impossible on that person doing something which disqualifies him.

A agrees to pay Rs.10,000/- if B marries C. C marries D. The marriage of C and B is impossible, but if D dies then B may marry C. Hence A's contract becomes impossible, on B marrying C.

iv) When the contingent event is to happen within a fixed time, the contract is void, if the event does not happen or becomes impossible before that time.

A agrees to pay 1 lakh, if the ship returns within one year, the contract

is enforceable if the ship arrives within one year. If the ship is burnt within one year, it becomes void.

v) Contingent contracts to do something on the happening of an impossible event are void. A agrees to pay Rs.1000/-, if the moon becomes extinct. This is void.

CHAPTER 7
DISCHARGE OF CONTRACTS

Ch. 7-1. Discharge of contracts :

A contract becomes discharged by any one of the following methods :

a) By proper performance :

This means the obligations are performed according to the terms of the agreement by the parties to the contract.

b) Impossibility or Frustration:

When performance becomes impossible or unlawful the contract becomes discharged. This means subsequent to the making of the contract it becomes void due to frustration (Section 56). Hence it was held in Fibrosa case, that the contract was void. (Add Ch.7.3 & 7.4)

c) By death of the contracting party :

The contract becomes discharged. This applies when there is a personal service to be done according to contract. In such a case on the death of the party, the contract gets discharged. Ex : Artist, Musician etc. The contract becomes void.

d) By rescission of contract:

A party to the contract may rescind by exercising his right in respect of a voidable contract. The contract becomes discharged. (Add Ch.15.2)

e) By Novatio : [New]

By entering into a new contract the original contract is superseded and hence becomes discharged. (Add Ch. 12.3)

f. Discharge by operation of law

1) By Merger

2) By making alteration in the instrument of contract

3)By Bankruptcy

3) **Ch.** 7-2. **Anticipatory breach :**

There may be a breach of contract even before the actual time fixed for the performance has arrived. Thus, if a promisor has refused to perform or disables himself from performing his promise, the promises is entitled to treat:

a) the contract as at an end, and to sue for damages without waiting for the time to come or

b) he may wait until the time comes, and then sue for the breach.
This applies only to an executory contract. The rule is that one party may keep the transaction alive without rescinding it ; and sue only after actual time has arrived.

Eg : a) If 'A' a singer contracts to sing at B's theatre for two nights every week for 2 months, and wilfully absents himself on the second week, B is at liberty to put an end to the contract.

b) In the above example, if B allows A to sing after the breach, he has agreed to the continuance and hence cannot put an end to the contract.

c) A agrees to supply on 1-6-92,100 metric tons of coal to B.
On 1-3-92, A writes to B, stating that he would not deliver. B may sue immediately or wait until 1-6-92 and then sue.

d) In Frost Vs. Knight D promised to marry P on the death of D's father. Even when D's father is alive, D refuses to marry. P may sue without waiting for D's father to die.

e) **Rochester Vs. Dela Tour**: D agreed to employ H ascourier on a continental tour from 1st June for 3 months. In May, Dwrote to H stating that he did not want him. H without waiting, sued D for breach of contract. Held, the contract had been expressly breached and H need not wait until June 2. Held : D liable.

f) **Avery** Vs. **Bowdon** : Here D agreed to load P's ship with cargo, within 45 days at Odessa, the ship arrived and waited for D to load, but D told the captain that there was no cargo. But, captain waited hoping D may bring cargo, In the meanwhile war broke out.

Held, contract frustrated. There was no anticipatory breach in the circumstances of the case.

Ch. 7-3. Doctrine of Impossibility :

Two aspects are dealt with in section 56 of the contract act.

1) The impossibility of performance. Sn. 56 (1)

2) The contract becoming frustrated Sn. 56 (2)

1) An agreement to do an impossible act is void. Sn 56 (1).

Ex : 1) A agrees with B to discover treasure by magic. This is void.

2) A and B contract to marry. Before the time fixed for marriage, A becomes mad. This is void.

"Implied condition theory" : The general rule is that every contract is legally binding on the parties to the contract. When there is a breach, the other party may sue for damages. There is one exception to this. Due to vital change of circumstances, the contractual obligation may become impossible

of performance. In such a case, the court reads a clause into the contract an implied condition, that the contract would be void when there were vital change of circumstances.

In the following cases such an implied condition is presumed :

i) Extinction or destruction of the subject matter

ii) Death or personal disablement of party

iii) State's declaration of war

iv) Subsequent illegality of the subject of the contract

v) Frustration (Add doctrine of Frustration).Ch 7.4

Ch. 7.4. **Doctrine of frustration :**

Sn. 56(2) provides that (i) A contract to do an act, which after the contract is made, becomes impossible, is void, (ii) A contract to do an act, which by reason of some event which the promisor could not prevent, becomes unlawful, the contract is void.

Ex : 1) A contracts to supply a Cargo to B at a foreign port. Both countries of A and B declare war against each other. Contract becomes void when war is declared.

2) A contracts to act in a film for 6 months. A becomes ill on several occasions, the contract becomes void on such occasions.

This is called the doctrine of frustration.

The origin of this can be traced to Parlin's case where the rule of absolute liability was enunciated.

In the 19th century a new doctrine was enunciated in **Tayler Vs. Caldwell,** where a music hall was let out on certain dates, but before those dates, the hall was destroyed by fire. Held : Owner not liable. The court held that there is in every contract an implied condition that the parties shall be excused, when the performance becomes impossible from the perishing of the subject matter, without any default of the parties.

Frustration was defined in this case. It means that the intention of the parties is frustrated, when the object which they had in view is no longer attainable because of change of circumstances. (Rebus sic stantibus) These are so fundamental as to strike at the root of the agreement. Hence contract becomes void.

Circumstances :

1) Event not happening: The leading case **is Krell** Vs. **Henry** also called Coronation case. In this case D agreed to hire from P a flat on June 26th and 27th, to make arrangements to view coronation procession. Part of rent was paid as advance. However, the procession was cancelled. P sued D for balance of rent. Held contract frustrated as the event never took place. - Not recoverable.

2) **Incapacity to do service** : The contract becomes void if the

promisor dies or becomes incapable of doing personal service as per the agreement.

In Robinson Vs. Davison, A piano player had agreed to perform the contract on a particular day but due to illness he could not perform. Held : There was frustration of contract.

3) **Government Intervention** : The contract may become in capable of performance if the govt. make laws prohibiting trade activities.

A number of cases have been reported during the time of the First and the Second World Wars.

Leading cases : Metropolitan Water Board Vs. Dick Tamplin

Vs. Anglo Mexican Co.

4) **Subsequent illegality** : If a particular trade which is valid at the time of making a contract is subsequently declared illegal by the Govt. the contract becomes frustrated due to illegality.

5) **Contract may become frustrated by delay :**

Limitation : Certain limitations or qualifications are provided for.

i) The frustration must not be due to the fault of either of the parties to the contract.

ii) Lease : Doctrine of frustration does not apply to the case of lease or tenancy.

iii) Express contract: If the parties expressly make the contract with reference to the supervening event then frustration is not applicable.

6) **Effect of Frustration** : In Fibosa case it was held that money paid in advance must be returned back.

In Fibosa Vs. **Fairburn,** A contract to manufacture and deliver to B certain machinery, part of the price i.e., 1000 pounds was paid as advance. Then war broke out. Performance became impossible and the contract became frustrated. Lord Simon held that as there was a total failure of consideration, the money paid could be recovered. The Law Reforms Act 1943, has provided that in case of frustration, the money paid was recoverable.

In Satyabrata Ghosh V. Mugneeram the Indian position was explained when any person has received an advantage over another in a void or frustrated agreement or contract, such a party should restore the same to the other party..

The facts were as follows :

D company had agreed to develop a big plot of land under a development scheme. It made a sale deed with Satyabrata Ghosh, (plaintiff), for sale of a portion of the plot of land, during the second world war ; the deed was to be executed within a month after the completion of the scheme. P had made earnest deposits. However, before the scheme started, the Govt.

requisitioned a major portion of the land, and entry was made illegal. The company offered to return the earnest deposit, or to convey the land in the existing circumstances. If P did not agree the company stated that it would declare the contract as frustrated and the deposit would be forfeited. P sued. Held : There was no frustration as the taking by the Govt. was temporary ; and that there was no time limit for the scheme. Held that D was liable.

CHAPTER 8
APPROPRIATION

Ch. 8. Appropriation :

The principles relating to appropriation were laid down in *"CLAYTON's"* case. Here A was a partner in a firm. D, Clayton, a creditor had advanced moneys to A. D made some advances to the firm. The firm became insolvent. D sued to recover from B and C and also from the estate of A. Held : Estate of A not liable. The amounts paid by B and C must be set off in order of time. The principles so laid down are embodied in Sees. 59, 60 and 61 with certain modifications.

If Aborrowed from C separate debts on different circumstances, then how should the creditor appropriate the amounts when A pays to C. (i.e., to which of the debts, the money is to be appropriated) This question is answered in these sections.

Appropriation is a right of the debtor. He is given the right to specify to which particular debt, the amount paid by him should be appropriated.

(i) With direction :

Sec. 59 : When a debtor makes a payment with express intimation or under circumstances indicating his intimation that the amount should be applied to a particular debt, the creditor, if he accepts the amount, must appropriate it to that particular debt.

A has borrowed from C Rs.500/-, Rs.800-, Rs.1,500/- and Rs.100/- on different dates.. On 1-1-92, A pays Rs.100/- specifying the debt of Rs. 100/- The amount must be appropriated to that debt only.

Creditor cannot appropriate it to any other debt. If he does not like to apply as stated by the debtor, he may refuse to accept the amount. He may sue him.(debtor)

(ii) **Without direction :**

Sec. 60 : When the debtor omits to intimate his intention of appropriation of a payment of a particular debt impliedly or expressly the crditor may apply at his discretion to any lawful debt, actually due and payable, whether time barred or not.

Hence the creditor may appropriate even to a time barred debt, (iii)

Absence of appropriation:

Sec. 61 : When neither the creditor nor the debtor makes any appropriation, the amount shall be applied in order of the time whether the debts are time barred or not.

CHAPTER 9

QUASI CONTRACTS

Ch. 9-1 Quasi contracts :

The contract act has recognised implied contracts and constructive contracts. In these there exists no contractual relationship between the parties. But the nature of the circumstances shows that a contract may be inferred. The person will have done something for another or paid money on that person's behalf. In such a case, the court comes forward on grounds of "Equity". The person who receives a benefit must make compensation to the other. In Roman law these were called obligatio quasi ex contractu. It is a "Liability" imposed upon a particular person to pay money to another person on the ground of "unjust benefit". Sns. 68 to 72, deal with these relations, resembling those created by contract. These are quasi-contracts. Quasi means half. Leading case is Moses Vs. Macferlan. Here it was held that the basis of quasi contract is "equity and good conscience". This was approved in *Sinclair Vs. Broughan & Nelson Vs. Lorholt.*

Sect 68 : A person who supplies the necessaries to another who is incapable of entering into contract is entitled to be reimbursed from the property of such person.

1. A supplies the necessaries to B, a lunatic. A is entitled to be reimbursed from the property of such person.

2. A supplies the necessaries to the wife and children of B, a lunatic. A is entitled to be reimbursed.

Necessaries : Means goods suitable to the conditions of life of a lunatic, infant, sick person etc. The actual requirements are to I e supplied. Necessaries to an infant means expenses for education, food, shelter ceremonies of his parents etc. In Rider V. Wombwell, it was held that supplying golden button to a child was not a "necessity".

The remedy is not against the person but against his property only. No interest can be recovered.

Sec. 69 : Where A is legally bound to pay certain amounts and B interested in such payments, pays the money, B is entitled to be reimbursed by A.

A tenant who pays the local municipal taxes is entitled to be reimbursed by the owner.

Sec. 70 : Where A does lawfully something or delivers any-

thing to another, such person who receives the benefit must make compensation or restore the thing. The act must not be a gift. A, a salesman leaves goods with B by mistake. A is entitled to compensation or return of the goods.

In English Law, Quantum meruit (reasonable compensation for work done) applies (add notes an Quantum Meruit).Ch.l2.7

Sec. 71 : The finder of goods, who take them into custody is subject to the same obligations as a bailee. He must find out the owner and deliver the goods.

A picked up a diamond lying on the floor of B's shop. He handed it over to B. The owner could not be traced. A claimed the diamonds from B. held B was liable in damages, because in the absence of the owner, A is entitled to it.

Sec. 72 : If a pays money or delivers anything by mistake or under coercion (force) to B, B should repay or return it.

1. A and B borrow Rs.1000/- from C. A pays Rs.1000/- to C. Not knowing this, B pays Rs.1000/- to C. C must pay Rs.1000/- to B.

2. Taxes paid to the Govt. under mistake of law or fact may be recovered, by the parties. In Kelin Vs. Solvan insurance co., had paid sums to W on a lapsed policy. Held, the Co. may recover.

CHAPTER 10

UNJUST ENRICHMENT

Ch.10-1. Unjust Enrichment:

The doctrine of "unjust enrichment" is based on the rule of "equity and good conscience" (Ex aequo et bono). According to this a man must not be allowed to enrich himself injustly at the expense of another. This, prevents a person from retaining any property or benefit against his conscience. This is a quasi-contract i.e., a contract is inferred from the circumstances, to return the property or benefit or to pay compensation.

Sns. 69 and 70, Contract Act deal with this doctrine. The scope is wider than the English doctrine.

Sn. 69 : Where A is legally bound to pay certain amounts, and, B

interested in such payments, pays the money, B is entitled to be reimbursed by A. e.g. A tenant who pays municipal taxes is entitled to be reimbursed by the owner.

Sn. 70 : Where A does lawfully something or delivers anything to another, such person who receives the benefit must restore the thing or pay compensation. The act of the party must not be gift e.g. A a salesman leaves his goods with B, by mistake. A is entitled to get the goods restored or compensation, from B.

Conditions :

There conditions must be satisfied :

i) The thing must be done or delivered lawfully

ii) The person must not do so gratuitously or freely.

iii) The person for whom the act is done etc., must enjoy the benefit of it.

In **Domodar Mudaliar V. Sec of State,** eleven villages were irrigated as a result of the repairs of the water tank made by the Govt. The Govt. had not done this gratuitously. It was held that the villages under Zamindars who had enjoyed this benefit must contribute to the expenses of the repairs.

Where one of the co-tenants pays the rent, the other should make good the amounts, where one mortgagor paid off on behalf of the other to save the property from sale, he is entitled to be reimbursed ;

Where A a contractor makes additional constructions to the house of B, and B enjoys the benefits, A may claim for such construction.

Liability of Govt.: Under Art. 299 of the Constitution of India, the Govt. as a party to the contract is liable if the other conditions of this section are fulfilled.

Unjust taxes or fees collected by the Govt. may be recovered from the Govt. under this provision.

Quantum Meruit : This is based on the principle of unjust enrichment. (Add : Quantum Meruit: Chapte 12-7).

CHAPTER 11

DAMAGES

Ch.ll. Breach of contract and compensation : Sn. 73 :

When there is a breach of contract, the party who suffers (by such a breach), is entitled to compensation for any loss or damage resulting therefrom. Compensation is assessed on the direct loss sustained, not on the remote or indirect loss. In quasi-contracts also, the same yardstick is applied against the defaulter.

e.g. : A contracts to sell and deliver 500 Metric Tonnes of saltpeter to

B at Rs.3000/- a M.T. to be paid on delivery. A commits a breach. B is entitled to recover compensation. This is calculated on the basis of the difference between the contract rate and the market rate on the date of delivery.

Penalty and Liquidated damages :

Measure of damages: The leading case is **Hadley Vs. Buxandale.** H had a flour mill. It was stopped due to breakage of a crank shaft. H gave it to a common carrier B to deliver it to C immediately. B was not told that it was a model to fabricate a new shaft. There was some delay in delivering. Hence, the new shaft was received very late, B suffered losses and lost contracts as the mill had been closed all these days. He sued for compensation. Held : **Not liable.**

Scope of the rule :

1. Damages arising naturally in the usual course of things, the plaintiff may recover.

2. "When the damages are reasonably supposed to have been in contemplation of both parties at the time of making the contract", the plaintiff is entitled to compensation.

No compensation is to be given for any remote and indirect loss or damage resulting from the breach of contract. In quasi-contract, the measure of damages shall be the same as above.

4. According to explanation to Sn. 73, in estimating the loss, the available means to remedy the loss, must be taken into account.

English Law makes a distinction between liquidated damages and penalty. The parties to the contract may agree that a particular sum shall be payable for breach of contract. That sum may be :

a) **Liquidated:** a sum which is a genuine, covenanted[fixed], pre-esti-mate of the damage.

b) **Penalty :** It is a payment of a stipulated sum in terrorem. It is an extravagant and unconscionable amount ; it is much greater in sum.

In India, there is no such distinction. It is left to the court to fix the actual loss and award the compensation. Sn. 74 provides for reasonable compensation. This may be the amount fixed by the parties or penalty if parties had so stipulated. For breach of bond with Govt. the party should pay the stipulated amounts.

1. Charging of compound interest in the place of simple interest (same rates), is not penalty. But to pay compound interest at a higher rate is penalty and hence cannot be recovered.

2. Payment of 15% interest and on default 75% is a penalty, therefore cannot be recovered.

3. A agreed to sell his house to B for Rs.20,000. Rs.10,000/- was fixed as damages for breach. Vendee failed. Vendor sued Held : The amount was extravagant and not recoverable.

In **Fathe Chand Vs. Balkrishna Das,** over and above the earnest deposit of Rs. 1000/- the parties had fixed Rs.24,000/- as damages for default in respect of a sale transaction of a house worth Rs.1,12,500/-.

Held: Rs.24,000 was in the nature of penalty and hence it cannot be recovered.

CHAPTER 12
MISCELLANEOUS

Ch.12-1. Ubberrimae Fidei:

It means utmost good faith. In contracts, there is no positive duty to act in good faith but the doctrine of caveat emptor applies.

There is one class of contracts which requires utmost good faith. The party is bound to disclose everything in good faith, to conclude the contract.

Insurance : Life, fire and Marine Insurance contracts require utmost good faith. A higher standard of good faith is required, as the essence of insurance is the risk it covers. If there is non-disclosure, the risk intended will be different from the actual risk. If there is non disclosure, the contract is voidable, i.e., insurer may avoid and is not liable. The leading case is Carter Vs. Bohem. It was held that facts which a prudent insurer knows need not be disclosed.

In LIC Vs. Shakuntala Devi, the LIC contended that the insurer had not disclosed that she was suffering from indigestion since a few days before taking out insurance. Insured died in a year. Held, this was a common ailment. Hence, Uberrimae Fidei does not apply as a basic requirement.

Contract of Marriage : There are doubts whether it is uberrimae fidei. A contract of suretyship is not a contract uberrimae fidei.

Ch. 12-2. Tender :

Sn. 38 of Contract Act deals with tender. Tender is admitted performance.

If one party to the contract makes an offer of performance and it is not accepted by the other party then the obligations of the person who makes the offer become extinguished. Hence he does not liable to breach of contract. In such cases "the offer of performance" is called a tender. The essentials are :

a) It must be unconditional.

b) It must be made at a proper time and under such circum stances as to show that the party was able and willing to perform his part of the promise.

c) In case of an offer to deliver anything, reasonable opportunity must be given to the promisee to examine the thing offered.

d) An offer may be made to one of several joint promisees.

e) An offer must be with reference to the entire obligation.

Ex : If agrees to deliver to B at his godown on 1st June 1996, 100 bales of cotton of a particular quality, in order to make a valid tender he must bring and keep ready the quality cotton before that or on that day.

B must have an opportunity to examine. This is a valid tender. If the quality and quantity are as per the contract, then B must accept. If B refuses, he becomes liable as there is a valid tender made by A according to the contract.

Ch. 12-3. Novatio : Sn. 62.

Novatio means a new contract made by the parties.

As the House of Lords have pointed out, "in the case of Novatio the parties to the contract agree to put an end to the original contract'. This is provided for in Section 62 of the contract Act. According to it, the Original Contract need not be performed if there is a Novatio which substitutes a new contract for the original contract.

Ex : 1. In an Insurance of A, A has mentioned his mother as his Nominee. Later with the consent of the insurer this is changed to the name of the wife of A. This is Novatio.

2. A enters into agreement with W to buy goods on instalment basis. Subsequently by mutual agreement the number of instalments is reduced. This is Novatio.

Novatio" is a catch-word. There are two elements : The discharge of one contract; the substitution of another. Reconstitution of a partnership firm with the incoming or outgoing partners is a novatio.

A owes money to B. A, B and C agree that C should pay this money to B. This is novotio.

A owes B Rs.10000/- under a P/N. A executed a mortgage in favour of B for the same amount. The P/N is discharged. There is a novotio with the mortgage-deed.

Ch. 12-4. Maintenance and Champerty :

There are two circumstances which increase the litigious tendency among the people. These belong to English rules. An agreement relating to Maintenance or Champerty is void according to English Law, as it is opposed to public policy.

Maintenance means to maintain a suit in a court by a person who has no interest in the subject matter. Champerty means that a person who has no interest agrees to 'share the fruits' of litigation. Both are void and cannot be enforced.

. Leading Case Fisher Vs. Kamala Naiker. Agreement between the advocate and the client wherein the advocate fee depended on the decision of the court was bad and therefore un-enforceable.

The courts in India have not applied the above rules of English Law. They apply the principles of equity and good conscience. If there is a fair and bonafide claim, it is enforceable. But, if it is an unfair transaction got up for the spoils of litigation, then it is void.

Ch. 12-5. Reciprocal promises :

A contract may contain promises which are to be performed by the promisor and the promisee.

The essence of a reciprocal promise, is that the party who is under the contract must be ready and willing to do his part of the contract. One party need not perform his obligation, unless the other is ready and willing to do his part of the promise.

There are 3 types of Reciprocal promises :

1. Simultaneous performance:

(Sn 51) If the contract contains promises which are to be simultaneously performed, no promisor need do his promise, unless the promisee is ready and willing to perform his part of the promise.

A and B contract that A shall deliver goods to B, but B must pay on delivery. If B is not ready and willing to pay, A need not deliver the goods. Similarly, B need not pay if A is not ready and willing to deliver the goods.

If the reciprocal promises are such that one of them cannot be performed till the other is done the person to do the latter must do so. If he fails he must pay compensation. (Sn 54) A agrees to sell 1000 bales of Cotton on next day to B, but B is to pay after 30 days. A does not supply. B need not pay.

2. Dependant Reciprocal Promises : (Sn. 52)

If the parties have agreed to a particular order of performance of the contract it should be performed accordingly. If the order is not so fixed, then it must be done in that order which the nature of the transaction requires.

A and B contract that A shall build a house for B for Rs.50,000/-

A must build the house first. B must pay after that.

3. Mutual and Dependant Promises : (Sn. 53)

When one party prevents the other from performing his promise, the contract becomes voidable at the option of the other party. Compensation may be recovered for any loss.

A and B contract that B shall build a house and that A should supply

the materials. A fails . The contract is voidable.

Where a series of Reciprocal promises are made, and if one of the parties does not perform his part of the promise, then he becomes liable to pay compensation.

A contracts with B and charters B's ship to carry goods from Madras to Mauritius. A does not supply the Cargo.A is liable to pay compensation.

Ch. 12-6. Time as the essence of contract: Sn. 55

In a contract, when a party promises to do something and no time is fixed, he must do within a reasonable time. When the contract requires that it should be performed at or within a fixed time, then it must be done within that time, if the intention of the parties is that time is the essence of the contract. If it is not so performed within time, the other party may rescind the contract (The contract is voidable).

A promises to deliver goods at B's godown on on 1st Jan 1996. But A brings goods on that day, but after business hours. A has not performed his promise.

If time is not the essence, the contract will not become voidable. The affected party may claim compensation. But, there is one exception. If the affected party agrees to extend time then no compensation can be recovered.

In Mercantile contracts, there is a general presumption that time is the essence of the contract.

A cargo of rice was to be shipped from Bombay to Bahrain in Nov. 1995 according to the contract between A and B. But, B ships in the month of Dec.1995. Time is the essence and hence A may rescind. If he agrees to extend time he cannot sue for compensation.

Ch. 12-7. **Quantum Meruit:**

It means payment for so much of work done (quantity basis).

Under English Law, a party to the contract who cannot sue for any reason, may resort to a claim of Quantum Meruit. He can claim reasonable compensation for work done by him. This is, therefore, a remedy.

When the entire work is to be done to claim the full benefit, under this remedy a claim may be preferred for so much of the work done.

The right is quasi-contractual in nature (Sn. 70).

When A does lawful job to B or delivers anything to him, and B enjoys the benefit thereof, then B is bound to make compensation for so much of the work done. Of course, this will not apply if the act is done free. eg. A saves B's house from fire. A cannot claim from B, if the act is free (gratuitous).

Two conditions are to be fulfilled

i) The original contract must be discharged

ii) The claim must be made by a party who is not at fault

A agrees with B to paint 5 pictures. The value is to be paid after the 5 pictures are made. A paints 3 pictures and delivers to B who accepts. A fails to paint 2 pictures due to an accident. B must pay Quantum Meruit.

The leading case is Planche V. Colburn. In this case D, publishers engaged P to write articles on history of armoury from ancient times, for 100 guineas. When the work was half done, D stopped publication. P sued D. Held D was liable to pay 50 guineas for work done by P under quantum merit.

Ch. 12-8. Lawful consideration : (Sn. 23)

One of the fundamental principles of the law of contract is that the consideration must be lawful. 'Ex turpi causa non oritur actio' (no right of action arises from a bad cause). Hence, the contract is void if the consideration or object is not lawful.

Consideration or object is unlawful if: i) it is orbidden by law

ii) is of such a nature that if permitted it would defeat the provision of any law.

iii) is fraudulent

iv) involves injury to the person or property

v) immoral, or

vi) opposed to public policy as determined by courts.

Hence, every agreement of which the object or consideration is unlawful is void.

Illustrations :

1) A agrees to sell his house to B for Rs.50,000/-. Hence B's promise to pay the money is the consideration for A's promise to sell to B. The consideration is lawful.

2) A and B enter into an agreement to share the gains obtained by fraud. This is void.

3) A promises to get B a job in Govt. service. B promises to pay Rs.20000/-. This is void.

4) Immoral consideration : An agreement by a to let out his house on rent for running a gambling house is void.

5) Opposed to Public Policy : Trading with the enemy in times of war is prohibited, Hence, any contract with the enemy would be void.

6) Traffic in public offices : any agreement to induce or influence to get a benefit to Govt. office is void.

Similarly, any agreement against marital relationship between husband and wife is void. Marriage breakage agreement is also void.

Sn.23 is based on English common law. Hence, public interest will suffer in case a contract which is against public policy is allowed.

THE END

REFERENCE SECTION

Selected sections of

INDIAN CONTRACT ACT, 1872

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CHAPTER I
OF COMMUNICATION, ACCEPTANCE AND REVOCATION OF PROPOSALS

3. Communication, acceptance and revocation of proposals
The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptance, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking, by which he intends to communicated such proposal, acceptance or revocation, or which has the effect of communicating it.

4. Communication when complete
The communication of a proposal is complete when it becomes to the knowledge of the person to whom it is made.
The communication of an acceptance is complete -as against the proposer, when it is put in a course of transmission to him so at to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.
The communication of a revocation is complete -as against the person who makes it, 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; as against the person to whom it is made, when it comes to his knowledge.

5. Revocation of Proposals and acceptance
A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.
An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but no afterwards.

6. Revocation how made
A proposal is revoked -
(1) by the communication of notice of revocation by the proposer to the other party;
(2) by the lapse of the time prescribed in such proposal for its acceptance, or, if no time is so prescribed, by the lapse of a reasonable time, without communication of the acceptance;
(3) by the failure of the acceptor to fulfil a condition precedent to acceptance; or
(4) by the death or insanity of the proposer, if the fact of the death or insanity comes to the knowledge of theacceptor before acceptance.

7. Acceptance must be absolute
In order to convert a proposal into a promise the acceptance must -

(1) be absolute and unqualified.
(2) be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted; and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but; if he fails to do so, he accepts the acceptance.

8. Acceptance by performing conditions, or receiving consideration
Performance of the conditions of proposal, for the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

9. Promise, express and implied
In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

CHAPTER II
OF CONTRACTS, VOIDABLE CONTRACTS, AND VOID AGREEMENTS

10. What agreements are contracts
All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void. Nothing herein contained shall affect any law in force in India, and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.

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

12. What is a sound mind for the purposes of contracting
A person is said to be of sound mind for the propose of making a contract, if, at the time when he makes it, he is capable of understanding it and of forming a rational judgement as to its effect upon his interest.A person who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of sound mind. A person who is usually of sound mind, but occasionally of unsound mind, may not make a contract when he is of unsound mind.

13. "Consent" defined
Two or more person are said to consent when they agree upon the same thing in the same sense.

14. "Free consent" defined

Consent is said to be free when it is not caused by -
(1) coercion, as defined in section 15, or
(2) undue influence, as defined in section 16, or
(3) fraud, as defined in section 17, or
(4) misrepresentation, as defined in section 18, or
(5) mistake, subject to the provisions of section 20,21, and 22.
Consent is said to be so caused when it would not have been given but for the existence of such coercion, undue influence, fraud, misrepresentation, or mistake.

15. "Coercion" defined
"Coercion" is the committing, or threating to commit, any act forbidden by the Indian Penal Code (45 of 1860) or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

16. "Undue influence" defined
(1) A contract is said to be induced by "under influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.
(2) In particular and without prejudice to the generally of the foregoing principle, a person is deemed to be in a position to dominate the will of another -
(a) where he hold a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or
(b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness, or mental or bodily distress.
(3) Where a person who is in a position to dominate the will of another, enters into a contract with him, and the transaction appears, on the face of it or on the evidence adduced, to be unconscionable, the burden of proving that such contract was not induced by undue influence shall be upon the person in a position to dominate the will of the other.
Nothing in the sub-section shall affect the provisions of section 111 of the Indian Evidence Act, 1872 (1 of 1872)

17. "fraud defined
"Fraud" means and includes any of the following acts committed by a party to a contract, or with his connivance, or by his agents, with intent to deceive another party thereto his agent, or to induce him to enter into the contract;
(1) the suggestion as a fact, of that which is not true, by one who does not believe it to be true;
(2) the active concealment of a fact by one having knowledge or belief of the fact;
(3) a promise made without any intention of performing it;
(4) any other act fitted to deceive;
(5) any such act or omission as the law specially declares to be fraudulent.

18. "Misrepresentation" defined
"Misrepresentation" means and includes -
(1) the positive assertion, in a manner not warranted by the information of the person making it, of that whichis not true, though he believes it to be true;

(2) any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or anyone claiming under him; by misleading another to his prejudice, or to the prejudice of any one claiming under him;
(3) causing, however innocently, a party to an agreement, to make a mistake as to the substance of the thing which is subject of the agreement.

19. Voidability of agreements without free consent
When consent to an agreement is caused by coercion, [***] fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused. A party to contract, whose consent was caused by fraud or mispresentation, may, if he thinks fit, insist that the contract shall be performed, and that he shall be put on the position in which he would have been if the representations made had been true.
Exception : If such consent was caused by misrepreentation or by silence, fraudulent within the meaning of section 17, the contract, neverthless, is not voidable, if the party whose consent was so caused had the means of discovering the truth with ordinary diligence.
Explanation : A fraud or misrepresentation which did not cause the consent to a contract of the party on whom such fraud was practised, or to whom such misrepresentation was made, does not render a contract voidable.

20. Agreement void where both parties are under mistake as to matter of fact
Explanation : An erroneous opinion as to the value of the things which forms the subject-matter of the agreement,is not be deemed a mistake as to a matter of fact.

21. Effect of mistake as to law
A contract is not voidable because it was caused by a mistake as to any law in force in India; but mistake as to a law not in force inIndia has the same effect as a mistake of fact.

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

23. What consideration and objects are lawful, and what not
The consideration or object of an agreement is lawful, unless -It is forbidden by law; oris of such nature that, if permitted it would defeat the provisions of any law or is fraudulent; ofinvolves or implies, injury to the person or property of another; orthe Court regards it as immoral, or opposed to public policy.
In each of these cases, the consideration or object of an agreement is said to be unlawful. Every agreement of which the object or consideration is unlawful is void.

24. Agreements void, if consideration are objects unlawful in part
If any part of a single consideration for one or more objects, or any one or any part of any one of several consideration of a single object, is unlawful, the agreement is void.

25. Agreement without consideration, void, unless it is in writing and registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law

An agreement made without consideration is void, unless -

(1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other; or unless

(2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless

(3) it is a promise, made in writing and signed by the person to be charged therewith or by his agent generally or specially authorised in that behalf, to pay wholly or in part debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

Explanation 1 : Nothing in this section shall affect the validity, as between the donor and donee, of any gift actually made.

Explanation 2 : An agreement to which the consent of the promisor is freely given is not void merely because the consideration is inadequate; but the inadequacy of the consideration may be taken into account by the Court in determining the question whether the consent of the promisor was freely given.

26. Agreement in restraint of marriage, void

Every agreement in restraint of the marriage of any person, other than a minor, is void.

27. Agreement in restraint of trade, void

Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void.

Exception 1 : Saving of agreement not to carry on business of which good will is sold - One who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein, provided that such limits appear to the court reasonable, regard being had to the nature of the business.[***]

28. Agreements in restrain of legal proceedings, void

Every agreement, by which any party thereto is restricted absolutely from enforcing his rights under or in respect of any contract, by the usual legal proceedings in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to the extent.

Exception 1 : Saving of contract to refer to arbitration dispute that may arise.This section shall not render illegal contract, by which two or more persons agree that any dispute which may arise between them in respect of any subject or class of subject shall be referred to arbitration, and that only and amount awarded in such arbitration shall be recoverable in respect of the dispute so referred.[***]

Exception 2: Saving of contract to refer question that have already arisen - Nor shall this section render illegal any contract in writing, by which two or more persons agree to refer to arbitration any question between them which has already

arisen, or affect any provision of any law in force for the time being as to reference to arbitration.

29. Agreements void for uncertainty
Agreements, the meaning of which is not certain, or capable of being made certain, are void.

30. Agreements by way of wager, void
Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which may wager is made.
Exception on favour of certain prizes for horse-racing: This section shall not be deemed to render unlawful a subscription or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be rewarded to the winner or winners of any horse-race.
Section 294A of the Indian Penal Code not affected : Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code (45 of 1860) apply.

CHAPTER III
OF CONTINGENT CONTRACTS

31. "Contingent contract" defined
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.

32. Enforcement of Contracts contingent on an event happening
Contingent contracts to do or not to do anything in an uncertain future event happens, cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

33. Enforcement of contract contingent on an event not happening
Contingent contracts to do or not to do anything if an uncertain future event does not happen, can be enforced when the happening of that event becomes impossible, and not before.

34. When event on which contract is contingent to be deemed impossible, if it is the future conduct of a living person
If the future event on which a contract is contingent is the way in which a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that the should so act within any definite time, or otherwise than under further contingencies.

35. When contracts become void, which are contingent on happening of specified event within fixed time
Contingent contracts to do or not to do anything, if a specified uncertain event

happens within a fixed time, become void, if, at the expiration of the time fixed, such event has not happened, or if, before the time fixed, such event becomes impossible.
When contracts may be enforced, which are contingent on specified event not happening within fixed time : Contingent contract tutu or not to do anything, if a specified uncertain event does not happen within a fixed time, may be enforced by law when the time fixed has expired and such event has not happened, or before the time fixed has expired, if it become certain that such event will not happen.

36. Agreements contingent on impossible event void
Contingent agreements to do or not to do anything, if an impossible event happens, are void, whether the impossibility of the event is known or not to the parties to agreement at the time when it is made.

CHAPTER IV
OF PERFORMANCE OF CONTRACTS, CONTRACTS WHICH MUST BE PERFORMED

37. Obligations of parties to contract
The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance in dispensed with or excused under the provision of this Act, or of any other law.
Promises bind the representative of the promisor in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

38. Effect of refusal to accept offer of performance

38. Effect of refusal to accept offer of performance
Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract.
Every such offer must fulfil the following conditions -
(1) it must be unconditional;
(2) it must be made at a proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is been made is able and willing there and then to do the whole of what he is bound by his promise to do;
(3) if the offer is an offer to deliver anything to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing which the promisor is bound by his promise to deliver. An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

39. Effect of refusal of party to perform promise wholly
When a party to a contract has refused to perform, or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its

continuance.

40. Person by whom promises is to be performed
If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contain in it should be performed by the promisor himself, such promise must be performed by the promisor.
In other cases, the promisor or his representative may employ a competent person to perform it.

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

42. Devolution of joint liabilities
When two or more person have made a joint promise, then, unless a contrary intention appears by the contract, all such persons, during their joint lives, and, after the death of any of them, his representative jointly with the survivor or survivors, and, after the death of the last survivor the representatives of all jointly, must fulfil the promise.

43. Any one of joint promisors may be compelled to perform
When two or more persons make a joint promise, the promise may, in the absence of express agreements to the contrary, compel any one or more of such joint promisors to perform the whole promise.
Each promisor may compel contribution : Each of two or more joint promisors 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.
Sharing of loss by default in contribution : If any one of two or more joint promisors make default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares.
Explanation : Nothing in this section shall prevent a surety from recovering, from his principal, payments made by the surety on behalf of the principal, or entitle the principal to recover anything from the surety on account of payments made by the principal.

44. Effect of release of one joint promisor
Where two or more persons have made a joint promise, a release of one of such joint promisors by the promisee does not discharge the other joint promisor, neither does it free the joint promisor so released from responsibility to the other joint promisor or joint promisors.

45. Devolution of joint rights
When a person has made a promise to two or more persons jointly, then unless contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and, after the death of any one of them, with the representative of such deceased person jointly with the survivor or survivors, and, after the death of the last survivor, with the

representatives of all jointly.

46. Time for performance of promise, where no application is to be made and no time is specified

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation : The question "what is a reasonable time" is, in each particular case, a question of fact.

47. Time and place for performance of promise, where time is specified and no application to be made

When a promise is to be performed on a certain day, and the promisor has undertaken to perform it without the application by the promisee, the promisor may perform it at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

48. Application for performance on certain day to be at proper time and place

When a promise is to be performed on a certain day, and the promisor has not undertaken to perform it without application by the promisee, it is the duty of the promisee to apply for the performance at a proper place within the usual hours of business.

Explanation : The question "what is proper time and place" is, in each particular case, a question of fact.

49. Place for the performance of promise, where no application to be made and no place fixed for performance

When a promise is to be performed without application by the promisee, and not place is fixed for the performance of it, it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance of the promise, and to perform it at such a place.

50. Performance in manner or at time prescribed or sanctioned by promise

The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions.

51. Promisor not bound to perform, unless reciprocal promisee ready and willing to perform

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

52. Order of performance of reciprocal promises

Where the order in which reciprocal promises are to be performed is expressly

fixed by the contract, they shall be performed in that order, and where the orders is not expressly fixed by the contract, they shall be performed in that order which the nature of transaction requires.

53. Liability of party preventing event on which contract is to take effect
When a contract contains reciprocal promises and one party to the contract prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented; and he is entitled to compensation from the other party for any loss which he may sustain in consequence of the non-performance of the contract.

54. Effect of default as to the promise which should be performed, in contract consisting or reciprocal promises
When a contract consists of reciprocal promises, such that one of them cannot be performed, or that its performance cannot be claimed till the other has been performed, and the promisor of the promise last mentioned fails to perform it, such promisor cannot claim the performance of the reciprocal promise, and must make compensation to the other party to the contract for any loss which such other party may sustain by the non-performance of the contract.

55. Effect of failure to perform a fixed time, in contract in which time is essential
When a party to a contract promises to do a certain thing at or before a specified time, or certain thins at or before a specified time and fails to do such thing at or before a specified time, and fails to do such thing at or before a specified time, the contract or so much of it as has not been performed, becomes voidable at the option of the promisee, if the intention of the parties was that time should be of essence of the contract.
Effect of such failure when time is not essential: If it was not the intention of the parties that time should be of the essence of the contract, the contract does not become voidable by the failure to do such thing at or before the specified time; but the promisee is entitled to compensation from the promisor for any loss occasioned to him by such failure.
Effect of acceptance of performance at time other than agreed upon: If, in case of a contract voidable on account of the promisor's failure to perform his promise at the time agreed, the promisee accepts performance of such promise at any time other than agree, the promisee cannot claim compensation of any loss occasioned by the non-performance of the promise at the time agreed, unless, at the time of acceptance, he give notice to the promisor of his intention to do so.

56. Agreement to do impossible act
An agreement to do an act impossible in itself is void. Contract to do act afterwards becoming impossible or unlawful: A contract to do an act which, after the contract is made, becomes impossible or, by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.
Compensation for loss through non-performance of act known to be impossible or unlawful: Where one person has promised to be something which he knew or, with

reasonable diligence, might have known, and which the promisee did not know to be impossible or unlawful, such promisor must make compensation to such promise for any loss which such promisee sustains through the non-performance of the promise.

57. Reciprocal promise to do things legal, and also other things illegal
Where persons reciprocally promise, firstly to do certain things which are legal, and, secondly under specified circumstances, to do certain other things which are illegal, the first set of promise is a contract, but the second is a void agreement.

58. Alternative promise, one branch being illegal
In the case of an alternative promise, one branch of which is legal and other other illegal, the legal branch alone can be enforced.

59. Application of payment where debt to be discharged is indicated
Where a debtor, owing several distinct debts to one person, makes a payment to him, either with express intimation, or under circumstances implying, that the payment is to be applied to the discharge of some particular debt, the payment if accepted, must be applied accordingly.

60. Application of payment where debt to be discharged is not indicated
Where the debtor has omitted to intimate, and there are no other circumstances indicating to which debt the payment is to be applied, the creditor may apply it at his discretion to any lawful debt actually due and payable to him from the debtor, whether its recovery is or is not barred by the law in force for the time being as to the limitations of suits.

61. Application of payment where neither party appropriates
Where neither party makes any appropriation, the payment shall be applied in discharge of the debts in order of time, whether they are or are not barred by the law in force for the time being as to the limitation of suits. If the debts are of equal standing, the payment shall be applied in discharge of each proportionally.

62. Effect of novation, rescission, and alteration of contract
If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

63. Promise may dispense with or remit performance of promise
Every promise may dispense with or remit, wholly or in part, the performance of the promise made to him, or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

64. Consequence of rescission of voidable contract
When a person at whose option a contract is voidable rescinds it, the other party thereto need to perform any promise therein contained in which he is the promisor.

The party rescinding a voidable contract shall, if he have received any benefit thereunder from another party to such contract restore such benefit, so far as may be, to the person from whom it was received.

65. Obligation of person who has received advantage under void agreement, or contract that becomes void

When an agreement is discovered to be void, or when a contract becomes void, 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 whom he received it.

66. Mode of communicating or revoking rescission of voidable contract

The rescission of a voidable contract may be communicated or revoked in the same manner, and subject to some rules, as apply to the communication or revocation of the proposal.

67. Effect of neglect or promise to afford promisor reasonable facilities for performance

If any promisee neglects or refuses to afford the promisee reasonable facilities for the performance of his promise, the promisor is excused by such neglect or refusal as to non-performance caused thereby.

CHAPTER V
OF CERTAIN RELATIONS RESEMBLING THOSE CREATED BY CONTRACT

68. Claim for necessaries supplied to person incapable of contracting, or on his account

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.

69. Reimbursement of person paying money due by another, in payment of which he is interested

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

70. Obligation of person enjoying benefit of non-gratuitous act

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

71. Responsibility of finder of goods

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

72. Liability of person to whom money is paid, or thing delivered, by mistake or under coercion

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

CHAPTER VI
OF THE CONSEQUENCES OF BREACH OF CONTRACT

73. Compensation of loss or damage caused by breach of contract

When a contract has been broken, the party who suffers by such breach is entitled to receive, form the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

Such compensation is not to be given for any remote and indirect loss of damage sustained by reason of the breach.

Compensation for failure to discharge obligation resembling those created by contract: When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

Explanation : In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by non-performance of the contract must be taken into account.

74. Compensation of breach of contract where penalty stipulated for

When a contract has been broken, if a sum is named in the contract as the amount be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damage or loss or proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Explanation : A stipulation for increased interest from the date of default may be a stipulation by way of penalty.

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

75. Party rightfully rescinding contract, entitled to compensation

A person who rightfully rescinds a contract is entitled to consideration for any damage which he has sustained through the non fulfillment of the contract.

THE END